

**NLWJC - KAGAN**

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**[09/18/1998 - 09/23/1998]**

# Withdrawal/Redaction Sheet

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Fred Duval to Elena Kagan. Personal. (1 page)	09/22/1998	P6/b(6)

### COLLECTION:

Clinton Presidential Records  
Automated Records Management System [Email]  
WHO ([Kagan])  
OA/Box Number: 500000

### FOLDER TITLE:

[09/18/1998-09/23/1998]

2009-1006-F

vz135

### RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]  
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]  
P3 Release would violate a Federal statute [(a)(3) of the PRA]  
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]  
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]  
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

b(1) National security classified information [(b)(1) of the FOIA]  
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]  
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]  
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]  
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]  
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]  
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]  
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Kate P. Donovan ( CN=Kate P. Donovan/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:18-SEP-1998 09:10:32.00

SUBJECT: Treasury/Postal Letter language on Haitians

TO: Kevin S. Moran ( CN=Kevin S. Moran/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: Peter G. Jacoby ( CN=Peter G. Jacoby/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: Leslie Bernstein ( CN=Leslie Bernstein/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP@EOP [ OPD ] )

READ:UNKNOWN

TO: Maria Echaveste ( CN=Maria Echaveste/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TEXT:

You may have seen this already, but just in case:

----- Forwarded by Kate P. Donovan/OMB/EOP on 09/18/98

09:07 AM -----

Charles E. Kieffer

09/17/98 09:16:40 PM

Record Type: Record

To: Kate P. Donovan/OMB/EOP@EOP

cc:

Subject: Treasury/Postal Letter language on Haitians

Put this under language issues at the end. Insert "Senate" in front of bill language.

----- Forwarded by Charles E. Kieffer/OMB/EOP on 09/17/98

09:16 PM -----

Steven M. Mertens

09/17/98 04:53:14 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Treasury/Postal Letter language on Haitians

At the WH Immigration meeting today, Maria Eschevesta and Peter Jacoby suggested the Treasury/Postal letter signal Administration support for relief for Haitians contained in an amendment attached to T/P by Senator Graham. BRD informed me that the letter is in final clearance and changes can only come from the 2nd floor. Here is proposed language for inclusion

in the T/P letter:

"The Administration supports efforts by Congress to provide legislative relief from deportation to Haitians. We believe the Haitians deserve the same treatment Congress provided to other Central American last year. Like Central Americans, Haitians for many years were forced to seek the protection of the United States because of oppression, human rights abuses and civil strife at home. This bill language supports our policy of treating similarly situated people the same and we urge its adoption."

Here is further background the issue from an e-mail in July from Ingrid. If you need anything further, please let me know. Thanks.

\*\*\*\*\*

From: Ingrid M. Schroeder on 07/09/98 10:49:24 AM  
Record Type: Record

To: See the distribution list at the bottom of this message  
cc: James J. Jukes/OMB/EOP@EOP  
Subject: Justice call to the Director re: Relief from Deportation for Haitians

Heads Up -

Justice advises that Deputy Attorney General Holder will be calling the Director this afternoon to urge Administration support for a potential Sen. Graham (D-FL) amendment to the Treasury Postal Appropriations Bill which would provide relief from deportation for certain Haitians in the United States.

#### Background

P.L. 105-100, District of Columbia Appropriations for FY 1998, contains a provision, the "Nicaraguan Adjustment and Central American Relief Act," which provides relief from deportation for certain Central Americans. The President's signing statement for P.L. 105-100 stated that "similar relief should be made available to Haitians and [I] will seek a legislative solution for this group."

In November 1997, Sen. Graham (D-FL) introduced S. 1504 and Rep. Conyers (D-MI) introduced H.R. 3049. These bills would provide relief from deportation for certain Haitians.

On February 24, 1998, the President sent a letter to Sen. Graham stating that "it is critical that Congress provide the most appropriate relief for Haitian nationals as quickly as possible" and that the Administration would work with Congress to achieve this goal.

According to the Department of Justice, Senator Graham intends to offer an amendment to the Treasury Postal Appropriations bill which would provide relief from deportation for certain Haitians and is almost identical to S. 1504.

Although the Administration has not taken an official position on S. 1504, Justice (Furst), NSC (Busby), and DPC (Fernandes) advise that they do not object to the bill.

Message Sent

To: \_\_\_\_\_

Charles E. Kieffer/OMB/EOP@EOP

Michael Deich/OMB/EOP@EOP

Julie A. Fernandes/OPD/EOP@EOP

Kenneth L. Schwartz/OMB/EOP@EOP

David J. Haun/OMB/EOP@EOP

Ingrid M. Schroeder/OMB/EOP@EOP

Silvana Solano/OMB/EOP@EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Christopher C. Jennings ( CN=Christopher C. Jennings/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:18-SEP-1998 09:28:14.00

SUBJECT:

TO: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TEXT:

weekly, sorry about that.===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS\_EXT:[ATTACH.D7]MAIL43559306D.226 to ASCII,

The following is a HEX DUMP:

FF5750438C040000010A02010000000205000000390C000000020000ADDC8ABC79D5912B8A397D

**My 1 insert for this week's weekly. CJ:**

**Medicare home health update.** Following your direction, we have been providing technical assistance to the Congressional Committee's of jurisdiction in their efforts to develop changes to the BBA's home health care reimbursement provisions that the industry (Val Halamandaris) feels are harming providers and their ability to provide quality service to Medicare beneficiaries. On Tuesday, Ways and Means Subcommittee Chairman Bill Thomas unveiled a new and fairly creative policy alternative that has some potential. It would raise per beneficiary and industry payment rates and begin to moderate geographical reimbursement disparities. Although not everything the home health folks wanted, Val (Elena: Val is a good friend of the POTUS and the President asked us, as you will recall, to be helpful where we could) sent generally positive signals about it. The primary problem with Mr. Thomas' approach, however, is that it would cost \$1.4 billion over 5 years and, rather than use Medicare program payment offsets, he now says he wants his fix to be paid for with the budget surplus. Following on the heels of the Democrats' strong vote against surplus-funded tax cuts on Thursday, we believe our Democrats (and us) are likely to take a similar opposing position on the proposal's financing. Although we might be able to sustain this position, it will place great pressure on us to help produce Medicare offsets -- most of which are politically unviable. We will be meeting with the Democrats on Friday and early next week to determine if we can come up with an acceptable savings package and, regardless, how best to position ourselves on this politically sensitive issue.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia Dailard ( CN=Cynthia Dailard/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:18-SEP-1998 11:07:02.00

SUBJECT: partial birth abortion

TO: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Nicole R. Rabner ( CN=Nicole R. Rabner/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TEXT:

The Senate sustained the President's veto, 64-36. Didn't lose any more votes this time around.



RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:18-SEP-1998 13:49:26.00

SUBJECT: Here are Welfare Ideas for October

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Cynthia A. Rice/OPD/EOP on 09/18/98  
01:43 PM -----

Andrea Kane

09/16/98 11:46:07 AM

Record Type: Record

To: Laura Emmett/WHO/EOP

cc: Cynthia A. Rice/OPD/EOP

Subject: Re: Reminder: New Event Ideas

Welfare Event Ideas:

Could announce TANF participation rates, along with latest caseload numbers, at a site visit that highlights welfare reform working well. Note that we don't know exactly when the participation rates will be ready (probably no earlier than later part of October) and the news may be mixed (a number of states may fail two-parent rates). After the new Census Bureau's Current Population Survey data becomes available 9/24, we will also be able to update the number of people who were on welfare in one year who were working in the following year (this number increased by nearly 30 percent between 1996 and 1997 -- as a result, 1.7 million adults on welfare in 1996 were working in March 1997. At the end of the month, we'll have March 1998 data).

The Partnership also has a low-profile event planned in Denver for 10/28 which we could probably build on. POTUS will be in Denver 10/20.

DOT plans to announce grant availability of Access to Jobs funds 10/7 -- this is a pretty small thing but we might be able to package with something else.

The WTW Competitive Grants we mentioned earlier will now not be ready until mid-November.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Bradley M. Campbell ( CN=Bradley M. Campbell/OU=CEQ/O=EOP [ CEQ ] )

CREATION DATE/TIME:21-SEP-1998 12:25:36.00

SUBJECT: Children's Health Briefing

TO: Kathleen A. McGinty ( CN=Kathleen A. McGinty/OU=CEQ/O=EOP @ EOP [ CEQ ] )  
READ:UNKNOWN

TO: Barbara Chow ( CN=Barbara Chow/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Sally Katzen ( CN=Sally Katzen/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Christopher C. Jennings ( CN=Christopher C. Jennings/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: GARY GUZY <GUZY.GARY ( GARY GUZY <GUZY.GARY @ EPAMAIL.EPA.GOV> [ UNKNOWN ] )  
READ:UNKNOWN

TO: Jennifer L. Klein ( CN=Jennifer L. Klein/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Paul J. Weinstein Jr. ( CN=Paul J. Weinstein Jr./OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: T J. Glauthier ( CN=T J. Glauthier/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

CC: Elliot J. Diringer ( CN=Elliot J. Diringer/OU=CEQ/O=EOP @ EOP [ CEQ ] )  
READ:UNKNOWN

CC: Robert S. Fairweather ( CN=Robert S. Fairweather/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

CC: Shannon Mason ( CN=Shannon Mason/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

CC: Wesley P. Warren ( CN=Wesley P. Warren/OU=CEQ/O=EOP @ EOP [ CEQ ] )  
READ:UNKNOWN

CC: Pamela S. Barr ( CN=Pamela S. Barr/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

CC: Michele J. Altemus ( CN=Michele J. Altemus/OU=CEQ/O=EOP @ EOP [ CEQ ] )  
READ:UNKNOWN

CC: Michael V. Terrell ( CN=Michael V. Terrell/OU=CEQ/O=EOP @ EOP [ CEQ ] )  
READ:UNKNOWN

CC: Beth A. Viola ( CN=Beth A. Viola/OU=CEQ/O=EOP @ EOP [ CEQ ] )  
READ:UNKNOWN

CC: Ronald M. Cogswell ( CN=Ronald M. Cogswell/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC: Lisa Guide ( CN=Lisa Guide/OU=CEQ/O=EOP @ EOP [ CEQ ] )

READ:UNKNOWN

CC: Nancy Marlow ( CN=Nancy Marlow/OU=CEQ/O=EOP @ EOP [ CEQ ] )

READ:UNKNOWN

CC: Claudia M. Abendroth ( CN=Claudia M. Abendroth/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC: Neera Tanden ( CN=Neera Tanden/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TEXT:

On Thursday, September 24, from 11:00 am to 1 pm in Room 472, EPA and HHS will be presenting a joint briefing on forthcoming initiatives and roll-out opportunities under President Clinton's executive order on environmental health risks to children (4/97). I believe this briefing will be of interest to all White House policy offices, and pertinent to the FY2000 budget process. I would be grateful if you could attend.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Kate P. Donovan ( CN=Kate P. Donovan/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:21-SEP-1998 14:36:38.00

SUBJECT: Draft VA/HUD Approps. Conferees Letter

TO: Maria Echaveste ( CN=Maria Echaveste/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: RUDMAN\_M@A1@CD@VAXGTWY ( RUDMAN\_M@A1@CD@VAXGTWY [ UNKNOWN ] ) (NSC)

READ:UNKNOWN

TO: Todd Stern ( CN=Todd Stern/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: Kerri A. Jones ( CN=Kerri A. Jones/OU=OSTP/O=EOP@EOP [ OSTP ] )

READ:UNKNOWN

TO: Kathleen A. McGinty ( CN=Kathleen A. McGinty/OU=CEQ/O=EOP@EOP [ CEQ ] )

READ:UNKNOWN

TO: Joshua Gotbaum ( CN=Joshua Gotbaum/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TO: Martha Foley ( CN=Martha Foley/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: Sally Katzen ( CN=Sally Katzen/OU=OPD/O=EOP@EOP [ OPD ] )

READ:UNKNOWN

TO: John Podesta ( CN=John Podesta/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: Alphonse J. Maldon ( CN=Alphonse J. Maldon/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: Michelle Peterson ( CN=Michelle Peterson/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: G. E. DeSeve ( CN=G. E. DeSeve/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TO: Jeffrey M. Smith ( CN=Jeffrey M. Smith/OU=OSTP/O=EOP@EOP [ OSTP ] )

READ:UNKNOWN

TO: Wesley P. Warren ( CN=Wesley P. Warren/OU=CEQ/O=EOP@EOP [ CEQ ] )

READ:UNKNOWN

TO: Lisa M. Kountoupes ( CN=Lisa M. Kountoupes/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: Ron Klain ( CN=Ron Klain/O=OVP@OVP [ UNKNOWN ] )

READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP@EOP [ OPD ] )

READ:UNKNOWN

TO: Gene B. Sperling ( CN=Gene B. Sperling/OU=OPD/O=EOP@EOP [ OPD ] )

READ:UNKNOWN

TO: Rahm I. Emanuel ( CN=Rahm I. Emanuel/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

CC: FARRAR\_J@A1@CD@VAXGTWY ( FARRAR\_J@A1@CD@VAXGTWY [ UNKNOWN ] ) (NSC)  
READ:UNKNOWN

CC: Victoria A. Wachino ( CN=Victoria A. Wachino/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

CC: Robert L. Nabors ( CN=Robert L. Nabors/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

CC: Paul J. Weinstein Jr. ( CN=Paul J. Weinstein Jr./OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

CC: Emil E. Parker ( CN=Emil E. Parker/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

CC: Lisa Zweig ( CN=Lisa Zweig/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

CC: Charles Konigsberg ( CN=Charles Konigsberg/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

CC: Shannon Mason ( CN=Shannon Mason/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

CC: Michelle Crisci ( CN=Michelle Crisci/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

CC: Jessica L. Gibson ( CN=Jessica L. Gibson/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

CC: Rosemary Evans ( CN=Rosemary Evans/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

CC: Adrienne C. Erbach ( CN=Adrienne C. Erbach/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

CC: Peter A. Weissman ( CN=Peter A. Weissman/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

CC: Judy Jablow ( CN=Judy Jablow/OU=CEQ/O=EOP@EOP [ CEQ ] )  
READ:UNKNOWN

CC: Charles R. Marr ( CN=Charles R. Marr/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

CC: Elizabeth Gore ( CN=Elizabeth Gore/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

CC: Jonathan H. Adashek ( CN=Jonathan H. Adashek/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

CC: Melissa G. Green ( CN=Melissa G. Green/OU=OPD/O=EOP@EOP [ OPD ] )

READ:UNKNOWN

CC: Kevin S. Moran ( CN=Kevin S. Moran/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

Below is the draft VA/HUD FY99 Appropriations Conferees letter. Please note that we have checked w/ Mikulski's staff regarding the "Ship Scrapping" language (pg. 8), and they are fine with it. We aim to send the letter by cob today, Monday (9/21). Please review the draft & provide comments/clearance by 6:00pm today. Thank you.

===== ATTACHMENT 1 =====  
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS\_EXT:[ATTACH.D40]MAIL439287361.226 to ASCII,  
The following is a HEX DUMP:

FF575043F3060000010A0201000000020500000041760000000200004C8CD5798A1F543B43D10E

The Honorable Bob Livingston  
Chairman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

The purpose of this letter is to provide the Administration's views on H.R. 4194, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Bill, FY 1999, as passed by the House and by the Senate. As the conferees develop a final version of the bill, your consideration of the Administration's views would be appreciated.

The Administration appreciates efforts by the Congress to accommodate the President's priorities within the 302(b) allocation. The President's FY 1999 Budget proposes levels of discretionary spending for FY 1999 that conform to the Bipartisan Budget Agreement by providing savings through user fees and certain mandatory programs to help finance discretionary spending. In the Transportation Equity Act, Congress -- on a broad, bipartisan basis -- took similar action in approving funding for surface transportation programs paid for with mandatory offsets. In addition, this year, as in the past, such mandatory offsets have been approved by the House and Senate in other appropriations bills. We want to work with the Congress on mutually-agreeable mandatory and other offsets that could be used to increase funding for high-priority discretionary programs such as National Service, environmental protection, and safe and affordable housing for low-income households.

Both the House- and the Senate-passed versions of the bill include requested funding for many of the Administration's priorities, and we appreciate the efforts of the House and Senate in this regard. Regrettably, there are a number of Presidential priorities that remain underfunded. In particular, the Administration is deeply concerned that the House-passed bill provides no funding for National Service and that both the House- and Senate-passed versions include significant cuts to the President's request for the Environmental Protection Agency's (EPA's) Hazardous Substance Superfund and significantly underfund the President's request for the Department of Housing and Urban Development's Welfare-to-Work and other incremental housing vouchers. The Administration is also very concerned about problematic language in the House and Senate versions of the bill regarding the Kyoto Protocol and strongly objects to the House's addition of significant portions of H.R. 2, the Housing Opportunity and Responsibility Act of 1997, which includes unacceptable provisions such as those relaxing income targeting. If the bill were to be presented to the President without responding to these concerns, the President's senior advisers would recommend that he veto the bill.

Below is a discussion of the Administration's specific concerns with the bill, as passed by the House and by the Senate. We look forward to working with you to resolve these concerns as the bill moves forward.

#### Corporation for National and Community Service

The Administration strongly objects to the House's termination of the Corporation for National and Community Service, one of the Administration's top priorities, and is deeply concerned that the Senate-passed bill would freeze funding for the Corporation at the FY 1998 level, \$74 million below the President's request and continue restrictive appropriation language. Eliminating funding for the Corporation would deny more than 49,000 Americans the opportunity to serve as AmeriCorps members in projects such as America Reads, the Administration's effort to raise student literacy through the use of tutors to supplement the school day activities. In addition, over one million students of all ages would forego the chance to participate in service learning activities in their schools and neighborhoods. The Administration urges the Congress to fully fund the Corporation for National and Community Service at the requested level of \$502 million and adopt the requested appropriations language.

#### Department of Housing and Urban Development

The Administration strongly opposes the inclusion of H.R. 2, the Public Housing Reform and Responsibility Act of 1997, in the House-passed bill. By changing the income targeting at admission for public and Section 8 assisted housing, H.R. 2 would shift subsidies from the poorest families, many of whom are working, to families with incomes sufficient to have greater housing choices. Such provisions would increase homelessness and hardship at a time when many low income Americans cannot afford even basic housing and are unacceptable. The Administration supports reasonable measures to encourage a range of incomes in public housing and thereby reduce concentrations of poverty. The Administration can find no rationale, however, for relaxing the income targeting of Section 8 subsidies that can be used throughout a community. We must not allow those with the most desperate housing needs to be left out in the name of housing reform.

The overall level of funding provided by both the House and the Senate bills for the Department of Housing and Urban Development (HUD) is generally consistent with the Administration's request, including the funding provided to renew all expiring Section 8 contracts. The Administration also appreciates the Senate's decision to end the ninety-day delay in reissuing of Section 8 certificates/vouchers on turnover and encourages the conferees to strike the House's ninety-day delay provision.



Despite the House's decision to fund 17,000 incremental welfare-to-work housing vouchers, the Administration is disappointed that both the House and the Senate have failed to provide adequate funding for the President's request for 103,000 incremental vouchers, including 50,000 vouchers to assist families moving from welfare to work and 34,000 vouchers to assist homeless individuals and families in their efforts to secure permanent housing. With millions of families needing to make the transition from welfare to work, and many low income Americans with unmet housing needs, the Administration believes it is critical for the Congress to fund the entire requested number of welfare-to-work housing vouchers.

The Administration also encourages the conferees to fund fully the President's request for \$400 million for an Economic Development Initiative (EDI) Community Empowerment Fund to generate 280,000 job opportunities in distressed communities. The House has cut the request by \$350 million, providing only \$50 million, and the Senate has provided \$85 million, with over 75 percent earmarked for specific projects. The Administration objects to the list of specific, earmarked projects in the Senate-passed bill for the EDI program. We look forward to working with the conferees to maximize the level of funds awarded to projects based on a consideration of merits and need. The Administration also urges the conferees to approve the proposed request for Brownfields redevelopment.

The Administration strongly opposes the House's \$21 million reduction for Housing Opportunities for Persons with AIDS (HOPWA) and urges the conferees to restore funding to the requested level, \$225 million. We believe a reduction to this critical program at a time of significant medical advances for the treatment of AIDS is shortsighted and will result in a significant number of the qualified caseload being denied essential housing and other related assistance.

The Administration appreciates the House and Senate's decision to increase funding for Homeless Assistance Grants above FY 1998 levels and urges the conferees to approve the Senate level. However, we strongly urge the conferees to strike the Senate's rigid set-aside for permanent housing, which would reduce the ability of each local entity to adopt the most effective response to the homeless challenge unique to that area identified in its Continuum of Care Plan. Further, the Administration is encouraged by the funding level provided by the House for Regional Opportunity Counseling, a voluntary effort to expand housing and employment opportunities available to low-income families.

The Administration is pleased with the support the House has expressed for an audit-based enforcement initiative for the Fair Housing Initiatives program, which would reduce the level of housing discrimination. We urge the conferees to adopt the House recommendation for this critical fair housing initiative and to provide the Administration's full request for Fair Housing. The Administration also supports the House funding level for the Partnership for Advancing Technologies in Housing and urges that funding also be included to support Regional Connections as requested in the President's budget.

The Administration appreciates the Congress' decision to raise the limit on FHA single-family loans to 87 percent of the GSE "conforming limit." The Administration urges the conferees to provide even greater homeownership opportunities by adopting its original request to raise FHA's loan limit to 100 percent of the GSE "conforming limit." This would yield another \$700 million in savings over five years.

The Administration is disappointed that the House and the Senate have failed to adopt the Administration's proposal to reform HUD's single-family property disposition program, which would produce substantial savings. The proposal would streamline and transform FHA's now lengthy, labor-intensive disposition process into one that would take advantage of private sector efficiencies, while maintaining HUD's long-standing mission of revitalizing distressed neighborhoods. Enactment of this proposal would yield over \$500 million in net present value savings in fiscal year 1999.

The Administration objects to the Senate's reduction in resources for the Office of Federal Housing Enterprise Oversight (OFHEO). OFHEO provides crucial taxpayer protection through its financial supervision of Fannie Mae and Freddie Mac.

#### Environmental Protection Agency

The Administration has several major concerns with the House and Senate marks for the Environmental Protection Agency (EPA). In particular, the Administration strongly objects to the \$593 million, or 28-percent, reduction made by both the House and the Senate to the President's request for Superfund, which would delay cleanups at sites nationwide and needlessly jeopardize public health. In addition, the Administration opposes the Senate's restrictive bill language that would hamper achievement of brownfield cleanups by preventing their use for revolving loan funds. The Administration urges the conferees to restore Superfund to the requested level and to delete the restrictive brownfields language.

The Administration strongly opposes the House's \$106 million reduction and the Senate's \$91 million reduction in the EPA request for the Climate Change Technology Initiative. This high-priority program should be funded fully to cut energy usage, save consumers money, and reduce greenhouse gas emissions. We will work with the Congress to restore funding to the requested level.

The Administration strongly opposes House bill and report language related to the Kyoto Protocol. While the Administration could not and would not implement the Protocol until it is ratified, the bill language (and Senate report language) could be interpreted broadly to prevent EPA activities that limit greenhouse gases -- for example, through enhancing energy efficiency -- even though they are authorized under current law. In addition, the Administration objects to Senate report language requiring a detailed Government Performance and Results Act (GPRA) plan concerning climate change activities. Such a plan would be premature and would appear to require the Administration to set goals for implementing the Kyoto Protocol before it

has been ratified by the Senate. The Administration opposes this and other such riders because they abuse the legislative process by denying the public and Members of Congress the opportunity to examine and debate these proposals openly.

The Administration urges the conferees to provide the full \$50 million request to help improve water quality in Boston Harbor and prevent beach closings. The Administration appreciates House action to provide full funding for EPA's part of the President's Clean Water Action Plan, which is designed to prevent pollution run-off and protect public health. We urge the conferees to maintain the House funding level in the final bill.

The Administration is concerned with the large number of unrequested, earmarked projects in both the House- and Senate-passed versions of the bill. This is especially troublesome when the House and the Senate have reduced funding for several high-priority Administration initiatives, including right-to-know programs, Montreal Protocol, GLOBE, and Mexican border wastewater treatment funding.

#### Council on Environmental Quality

The Administration appreciates the modest increases over the FY 1998 level provided by the House and Senate for the Council on Environmental Quality (CEQ). However, we strongly believe that in order to allow CEQ to carry out its environmental mission and reinvention efforts, the full requested level should be provided, and language prohibiting use of detailees should be deleted.

#### Department of Veterans Affairs

The Administration appreciates the responsiveness of the House and the Senate to several of the President's key initiatives for the Department of Veterans Affairs (VA). Still, three key areas of concern remain:

- Earmarked Funding for New York/New Jersey Health Care Network. The Administration appreciates the Senate's strong support of the Veterans Equitable Resource Allocation (VERA) formula, which bases network resource allocations on workload and local cost factors. The Administration urges the conferees to strike House report language that directs VA to provide an additional \$20 million to the New York/New Jersey VA health care network. The VERA formula has begun to shift resources from the Northeast to the underfunded South and Southwest. Allocating additional funding to the New York/New Jersey network would mean less for these other under-funded networks.
- New National Cemetery in Eastern Kentucky. The Administration objects to House report language urging that a new cemetery be established and that VA use whatever advance planning funds may be necessary to initiate the planning phase and to prepare a progress report. The eastern Kentucky area was not identified in the 1987 or 1994

reports to Congress as an area of the country most in need of a national cemetery. Other areas of the country have larger concentrations of veterans, and most veterans residing in the eastern half of Kentucky are already served by three open national cemeteries in Kentucky (Camp Nelson, Lebanon, and Mill Springs) and one in Tennessee (Mountain Home).

- Changes to the funding mechanism for adjudication office. The Administration prefers the language of the Senate bill with regard to the funding mechanism for VA's newly-created Office of Resolution Management and Office of Employment Discrimination Complaint Adjudication. The House-passed bill includes language that would change the funding mechanism for these two offices from reimbursable, as requested in the President's budget and included in the Senate bill, to specific transfers of estimated amounts. The House provision would reduce the incentive for VA managers to control the costs associated with the processing of EEO complaints, and it would lessen the coordinated arrangements that reimbursable services foster.

#### Community Development Financial Institutions Fund

We strongly urge the conferees to fund the Community Development Financial Institutions Fund at the requested level, \$125 million. The reductions to the President's request of \$45 million and \$70 million in the House and Senate versions of the bill, respectively, would severely reduce the Fund's ability to leverage investments, loans, and financial services in the country's most distressed communities.

#### National Aeronautics and Space Administration (NASA)

The Administration is deeply concerned with reductions made by the House to the requests for the International Space Station, Space Shuttle, and Earth Science programs and strongly urges the conferees to support full funding for these activities. We also are concerned about the increased number of appropriation accounts for the International Space Station and other activities included in the Senate-passed bill. The redirection of key resources to implement this change could threaten NASA's Year 2000 conversion effort and pose an audit risk.

The Administration is prepared to work with the Congress to control development costs of the Space Station while also providing the resource flexibility within the Human Space Flight account to deal with unanticipated requirements, particularly additional contingency steps that may be called for in light of continuing resource problems of the Russian government. In addition, we are concerned with House language prohibiting the use of funds for the Triana project and urge the conferees to strike this provision. Finally, the Administration is troubled that both the House- and Senate-passed versions of the bill contain a very large number of unrequested, site-specific earmarks, which would have the effect of circumventing the competitive, peer review process.

### Federal Emergency Management Agency

The Administration appreciates the level of funding provided by the House and Senate for the Federal Emergency Management Agency. However, we believe that the reductions (\$20 million in the House and \$25 million in the Senate) to the President's request for pre-disaster mitigation grants are shortsighted. These grants would help reduce the costs of future disasters by leveraging local and private-sector support for enhanced mitigation efforts at the State and community level. We urge the Congress to fund fully the President's request for this important initiative. In addition, the Administration is pleased that the Senate-passed bill includes \$8 million in response to the President's June 8th request for funding to help States and communities prepare for potential terrorist incidents involving chemical and/or biological weapons. We urge the Congress to approve requested emergency funding for FEMA Disaster Relief.

### National Science Foundation

Given the budget constraints faced by the House and Senate, the Administration appreciates the strong support shown for the National Science Foundation (NSF). The Administration is firmly convinced that support for the Foundation's research and education programs is a critically important investment in the future well-being of the Nation. Therefore, the Administration urges the conferees to fund fully the President's request for all of NSF's activities. Additionally, the Administration remains concerned about the number and specificity of funding earmarks, which in some cases come dangerously close to infringing on an open, merit-based review and decision-making process. Finally, the Administration strongly supports both the Polar Cap Observatory and the GLOBE program and urges the conferees to provide the budget request for each of these activities.

### Neighborhood Reinvestment Corporation

The Administration is pleased that the House-passed version of the bill would provide the President's full request for the Neighborhood Reinvestment Corporation (NRC), and we urge the conferees to adopt the House position. The NRC has a proven, successful record of leveraging private sector resources to promote homeownership and helping strengthen America's communities. This funding would provide an additional \$25 million for a homeownership initiative that seeks to create 10,000 new homeowners through FY 2000.

### Other Issues

- San Francisco Restriction. The Administration strongly objects to the amendment which requires the City of San Francisco not to use any Federal funds to implement a local ordinance. This is an unfunded mandate. Legislating through the use of Federal funds

against a single ordinance in a single city would be contrary to the most basic principles of Federalism underlying our system of Government. The amendment would impose a burdensome administrative requirement on the City, requiring it to set up a system to separately track expenditures to ensure that no Federal funds were used to implement one particular City ordinance.

- Consumer Product Safety Commission. The Administration opposes bill language in the House-passed bill that would block the Consumer Product Safety Commission's (CPSC's) ability to promulgate rules to reduce the flammability of upholstered furniture. This language intrudes upon CPSC's ability, as well the ability of other agencies, to carry out their responsibilities. Furthermore, these efforts to block the development of a new safety standard represent a threat to public health.
- American Battle Monuments Commission. The Administration is concerned that the Senate-passed bill includes an earmark of \$2.5 million for restoration of the Liberty Memorial in Kansas City, Missouri. (The Liberty Memorial has been estimated to need \$60 million to \$75 million in restoration funding.) This earmark would set an undesirable precedent. Currently, ABMC's program maintains memorials to American Armed Forces where they served overseas, not in local communities around the country. The Smithsonian's Save Outdoor Sculpture program has identified the Liberty Memorial as one of 43 domestic World War I and II outdoor monuments and memorials in need of immediate repair. The ABMC program is not the appropriate place to fund this kind of domestic public works program. We recommend that the conferees remove this earmark from ABMC's language.
- Section 41, Open Season for Certain Alaska Native Veterans for Allotments. The Administration supports suitable legislation that would renew the opportunity for an allotment for Alaska Native veterans who missed the opportunity because of Vietnam War service in 1970 and 1971. However, section 41 of the Senate-passed bill would extend benefits beyond those who missed an opportunity due to service; would unreasonably delay adjudication and conveyance of pending Native or State applications under existing entitlements and claims; would unreasonably open special Conservation System Units set aside by Congress (such as parks, scenic rivers, refuges, and national wilderness areas) to private inholdings and development; and, would raise inequities among Alaska Natives. The Administration strongly objects to this provision, as written.
- Ship Scrapping. The Administration supports the Senate Appropriations Committee's goal of ensuring a safe and environmentally sound ship scrapping policy. The specific requirements in the Senate version of the bill, however, raise implementation issues such as EPA's certification of the enforcement of other countries' laws. The Administration believes that a starting point to develop a more workable approach to achieve these protection aims would be to build on the recommendations of the Interagency Ship Scrapping Review Panel. The Administration is committed to working with Congress to resolve these concerns and to finding mutually acceptable solutions that achieve these important objectives.

We look forward to working with the Committee to address our mutual concerns.

Sincerely,

Jacob J. Lew  
Director

Identical Letter Sent to The Honorable Bob Livingston,  
The Honorable David R. Obey, The Honorable Jerry Lewis,  
The Honorable Louis Stokes, The Honorable Ted Stevens,  
The Honorable Robert C. Byrd, The Honorable Christopher S. Bond,  
and The Honorable Barbara Mikulski

The Honorable David R. Obey  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Representative Obey:

The Honorable Jerry Lewis  
Chairman  
Subcommittee on VA-HUD-Independent  
Agencies Appropriations  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

The Honorable Louis Stokes  
Subcommittee on VA-HUD-Independent  
Agencies Appropriations  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Representative Stokes:

The Honorable Ted Stevens  
Chairman  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

The Honorable Robert C. Byrd  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510



Dear Senator Byrd:

The Honorable Christopher S. Bond  
Chairman  
Subcommittee on VA-HUD-Independent  
Agencies Appropriations  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

The Honorable Barbara Mikulski  
Subcommittee on VA-HUD-Independent  
Agencies Appropriations  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510

Dear Senator Mikulski:

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:21-SEP-1998 15:57:26.00

SUBJECT: FYI: Draft Veto SAP for House Tax Bill; NOTE programs subject to spending

TO: Cynthia Dailard ( CN=Cynthia Dailard/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Neera Tanden ( CN=Neera Tanden/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Andrea Kane ( CN=Andrea Kane/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Essence P. Washington ( CN=Essence P. Washington/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Leanne A. Shimabukuro ( CN=Leanne A. Shimabukuro/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Nicole R. Rabner ( CN=Nicole R. Rabner/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Tanya E. Martin ( CN=Tanya E. Martin/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Jennifer L. Klein ( CN=Jennifer L. Klein/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Christopher C. Jennings ( CN=Christopher C. Jennings/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Jose Cerda III ( CN=Jose Cerda III/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Jonathan H. Schnur ( CN=Jonathan H. Schnur/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Donna L. Geisbert ( CN=Donna L. Geisbert/OU=OPD/O=EOP @ EOP [ UNKNOWN ] )

READ:UNKNOWN

TO: Julie A. Fernandes ( CN=Julie A. Fernandes/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Paul J. Weinstein Jr. ( CN=Paul J. Weinstein Jr./OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Mary L. Smith ( CN=Mary L. Smith/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Christa Robinson ( CN=Christa Robinson/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Cathy R. Mays ( CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Jeanne Lambrew ( CN=Jeanne Lambrew/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Thomas L. Freedman ( CN=Thomas L. Freedman/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Michael Cohen ( CN=Michael Cohen/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Sarah A. Bianchi ( CN=Sarah A. Bianchi/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TEXT:

----- Forwarded by Cynthia A. Rice/OPD/EOP on 09/21/98  
03:55 PM -----

Ronald E. Jones  
09/21/98 03:52:37 PM  
Record Type: Record

To: See the distribution list at the bottom of this message  
cc: Jeffrey A. Weinberg/OMB/EOP, James J. Jukes/OMB/EOP, Melinda D.  
Haskins/OMB/EOP  
Subject: Draft SAP for HR4579 Taxpayer Relief Act of 1998 -- NO HARD COPY  
WILL BE SENT -- COMMENTS BY NOON TUESDAY

The attached will also be sent to DOJ and SSA.  
----- Forwarded by Ronald E. Jones/OMB/EOP on 09/21/98  
03:50 PM -----

Ronald E. Jones  
09/21/98 10:52:48 AM  
Record Type: Record

To: See the distribution list at the bottom of this message  
cc: James J. Jukes/OMB/EOP@EOP, Jeffrey A. Weinberg/OMB/EOP@EOP  
Subject: Draft SAP for HR4579 Taxpayer Relief Act of 1998 -- NO HARD COPY  
WILL BE SENT -- COMMENTS BY NOON TUESDAY

Total Pages: \_\_\_\_

LRM ID: REJ596  
EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
Washington, D.C. 20503-0001

Monday, September 21, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Jeffrey A. Weinberg (for) Assistant Director for Legislative  
Reference

OMB CONTACT: Ronald E. Jones

PHONE: (202)395-3386 FAX: (202)395-3109

SUBJECT: Statement of Administration Policy on HR4579 Taxpayer  
Relief Act of 1998

DEADLINE: Noon Tuesday, September 22, 1998

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS:

DISTRIBUTION LIST

AGENCIES:

118-TREASURY - Richard S. Carro - (202) 622-0650

76-National Economic Council - Sonyia Matthews - (202) 456-6630

Council of Economic Advisers - Liaison Officer - (202) 395-5084

EOP:

Joseph J. Minarik

Charles R. Marr

Charles M. Brain

Michelle Peterson

Michele Jolin

Charles Konigsberg

Kate P. Donovan

Robert G. Damus

Rosalyn J. Rettman

Theodore Wartell

Alan B. Rhinesmith

Justine F. Rodriguez

Mary C. Barth

Alexander T. Hunt

Pamula L. Simms

Edward M. Rea

Susanne D. Lind

LRM ID: REJ596 SUBJECT: Statement of Administration Policy on HR4579

Taxpayer Relief Act of 1998

RESPONSE TO

LEGISLATIVE REFERRAL

MEMORANDUM

You may also respond by:

- Please include the LRM number shown above, and the subject shown below.

FROM: \_\_\_\_\_ (Date)  
 \_\_\_\_\_ (Name)  
 \_\_\_\_\_ (Agency)  
 \_\_\_\_\_ (Telephone)

\_\_\_\_\_ Concur

\_\_\_\_\_ No Objection

\_\_\_\_\_ No Comment

\_\_\_\_\_ See proposed edits on pages \_\_\_\_\_

\_\_\_\_\_ Other: \_\_\_\_\_

\_\_\_\_\_ FAX RETURN of \_\_\_\_\_ pages, attached to this response sheet

In addition, the billions of dollars this bill would drain out of

projected budget surpluses violates the President's unwavering commitment to save Social Security first. None of the projected surpluses should be touched until the long-term solvency of Social Security has been fully secured. We must not squander this unique opportunity to save Social Security.

Last February in the FY 1999 Budget, the President proposed tax cuts targeted to help American families -- and proposed offsets to fully pay for the tax cuts. The Administration urges the Congress to return to the path of fiscal responsibility and to consider only tax cuts which have been fully paid for.

#### Pay-As-You-Go-Scoring

H.R. 4579 would affect revenues; therefore it is subject to the pay-as-you-go requirement of the Budget Enforcement Act. Under the Budget Enforcement Act, OMB would be required by law to impose automatic spending cuts on Medicare and other non-exempt mandatory spending programs in amounts sufficient to offset the revenue losses projected for FY 1999. In the absence of offsetting legislation, these automatic budget cuts would be triggered again in each of the following four years. These automatic cuts would affect: the special milk program, vocational rehabilitation, Stafford loans, foster care and adoption assistance, Medicare (up to 4 percent), and could also affect CCC, Child Support Enforcement, Social Services Block Grants, Immigration Support, Crop Insurance, Veterans Education and Readjustment Benefits, and others.

#### Message Sent

To: \_\_\_\_\_

Joseph J. Minarik/OMB/EOP@EOP  
Charles R. Marr/OPD/EOP@EOP  
Charles M. Brain/WHO/EOP@EOP  
Michelle Peterson/WHO/EOP@EOP  
Michele Jolin/CEA/EOP@EOP  
Charles Konigsberg/OMB/EOP@EOP  
Kate P. Donovan/OMB/EOP@EOP  
Robert G. Damus/OMB/EOP@EOP  
Rosalyn J. Rettman/OMB/EOP@EOP  
Theodore Wartell/OMB/EOP@EOP  
Alan B. Rhinesmith/OMB/EOP@EOP  
Justine F. Rodriguez/OMB/EOP@EOP  
Mary C. Barth/OMB/EOP@EOP  
Alexander T. Hunt/OMB/EOP@EOP  
Pamula L. Simms/OMB/EOP@EOP  
Edward M. Rea/OMB/EOP@EOP  
Susanne D. Lind/OMB/EOP@EOP  
karen.dorsey@treas.sprint.com @ inet  
Sonyia Matthews/OPD/EOP@EOP

#### Message Sent

To: \_\_\_\_\_

Jack A. Smalligan/OMB/EOP

Christopher M. Sauer/OMB/EOP  
Richard E. Green/OMB/EOP  
Joanne Cianci/OMB/EOP  
Jonathan Orszag/OPD/EOP  
Jeff B. Liebman/OPD/EOP  
Emil E. Parker/OPD/EOP  
Cynthia A. Rice/OPD/EOP  
Broderick Johnson/WHO/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Essence P. Washington ( CN=Essence P. Washington/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:21-SEP-1998 16:16:54.00

SUBJECT: Single Sex Mtg.

TO: Minyon Moore ( CN=Minyon Moore/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Scott\_fleming ( Scott\_fleming @ ed.gov @ inet [ UNKNOWN ] )

READ:UNKNOWN

TO: Maureen T. Shea ( CN=Maureen T. Shea/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Tanya E. Martin ( CN=Tanya E. Martin/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Robert M. Shireman ( CN=Robert M. Shireman/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Jamie\_Studley ( Jamie\_Studley @ ed.gov @ inet [ UNKNOWN ] )

READ:UNKNOWN

TO: Broderick Johnson ( CN=Broderick Johnson/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Jennifer L. Klein ( CN=Jennifer L. Klein/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Robert N. Weiner ( CN=Robert N. Weiner/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Edward W. Correia ( CN=Edward W. Correia/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Michael Cohen ( CN=Michael Cohen/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Chantell S. Long ( CN=Chantell S. Long/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TEXT:

We are having a meeting to discuss Sen. Hutchinson's single-sex schools amendments. This meeting will be held tomorrow, at 11:00 AM in room 248 OEOB.

Thanks

NOTE TO ED FOLKS: please E-Mail me or call me at 456-7732 with your DOB's and your SS numbers ASAP!!!!



RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Julie A. Fernandes ( CN=Julie A. Fernandes/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:21-SEP-1998 18:08:18.00

SUBJECT: Liberians

TO: Maria Echaveste ( CN=Maria Echaveste/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

CC: Marjorie Tarmey ( CN=Marjorie Tarmey/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

According to Scott Busby, there was renewed violence in Liberia over the week-end (200 dead; lots injured; indications of political instability) that has caused the State Dept. to re-think their objection to recommending an extension of temporary protected status (TPS) for 8,000 Liberians in this country who fled their civil war.

As you recall, State wanted to provide some sort of relief from deportation for these 8,000 Liberians (their TPS expires at the end of Sept.), but did not recommend an extension of TPS b/c they had recently (last March) made a recommendation to the AG that she not extend TPS -- they didn't want to change their conclusion about the stability of the country without the occurrence of an intervening act that could be used to justify the change. They were also concerned that a conclusion that the country is unstable would be inconsistent with our continued support for the repatriation of 480,000 Liberians from other parts of Africa.

With this renewed violence, State may change their recommendation. Nothing is yet final, but if the State Dept. makes the recommendation to extend TPS, the AG will likely do it, at least for the next 6 months. That will temporarily relieve the pressure from the advocates for the Pres. to grant DED for this population. I will keep you posted.

julie

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Julie A. Fernandes ( CN=Julie A. Fernandes/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:21-SEP-1998 18:24:14.00

SUBJECT: Mandatory detention

TO: Maria Echaveste ( CN=Maria Echaveste/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Marjorie Tarmey ( CN=Marjorie Tarmey/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TEXT:

FYI -- background and follow-up information from last week's immigration meeting.

On October 9, the Department of Justice's ability to waive the mandatory detention requirements to IIRIRA (the 1996 Immigration Act) expire. INS is seeking a two-year extension of the waiver for two reasons: first, b/c Congress has not appropriated enough money to the INS for them to build adequate bed-space to accomdate the detention of all criminal and deportable aliens; second, even if they had the space, they believe that the mandatory detention of all criminal and deportable aliens (regardless of their assessment of the likelihood of flight; regardless of how old the offense it) is bad policy. The Administration strongly opposed this provision when it became part of the 1996 Act.

INS has drafted language that would provide for a two year extension of the waiver. At first, INS wanted to send a formal transmittal letter that said that they want an extension of the waiver b/c: (1) the INS does not have the bed-space (2) and we need more time to convince the Congress that there are better ways of achieving their ends. Now, they have agreed to informally transmit the amendment (through Kennedy's staff) and make our position clear in testimony that was delivered last Friday on the subject.

julie

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Shannon Mason ( CN=Shannon Mason/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:22-SEP-1998 12:19:09.00

SUBJECT: Conference call today

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Karen Tramontano ( CN=Karen Tramontano/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Cecilia E. Rouse ( CN=Cecilia E. Rouse/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Julie A. Fernandes ( CN=Julie A. Fernandes/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Barbara Chow ( CN=Barbara Chow/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

CC: Sandra Yamin ( CN=Sandra Yamin/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TEXT:

There will be a conference call on H1-B today at 2:00pm. The number to dial is 757-2104, code 3939.

Unfortunately this time is not negotiable. Please confirm your participation.

Thanks

Participants

Sally Katzen

Ceci Rouse

Peter Jacoby

Karen Tramontano

Elena Kagan

Julie Fernandes

Gerry Shea (AFL-CIO)

Peggy Taylor (AFL-CIO)

Charity Wilson (AFL-CIO)

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Julie A. Fernandes ( CN=Julie A. Fernandes/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:22-SEP-1998 13:37:29.00

SUBJECT: African Burial Ground -- ME mtg. update

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TEXT:

I. attended a meeting this morning with Maria E. to discuss the issue of the African Burial ground that was discovered in lower Manhattan.

Some years ago, during construction of a federal building in lower Manhattan, an African burial ground was found (from 17th or 18th century). GSA (who was the builder) has been managing the removal of the remains and other "mitigation" efforts since then, including the development of a research project (with Howard Univ.), and a memorial. In 1992, Congress specified that \$3 million should be set aside to manage this project. Since then, the project has grown in scale and is now projected to cost close to \$16 million. Some advocates want more to be done, including an environmental impact study and an extensive on-site archeology project. There is interest in this issue from some members of Congress (Lewis, Hilliard, D'Amato, Nadler) and some advocates.

The questions for us are: (1) who should be managing this project, with options including both federal govt. agencies, state govt., local govt., a private historical society, a university (GSA -- understandably -- wants to get out of managing this); (2) what should be the scope of the project; and (3) how do we manage the relations with Howard Univ. (who have been involved to date and who have an interest in the forensic part of the project).

As next steps, OMB is going to figure out how much GSA has spent and determine whether they have notified Congress (as they are supposed to) on expenditures in excess of 1.6 million. David is also going to talk to Michael D. and Josh G. about where (within the federal govt.) this may be best managed. Broderick is going to check in with members of Congress.

julie

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cathy R. Mays ( CN=Cathy R. Mays/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:22-SEP-1998 14:36:30.00

SUBJECT: Weekly Strategy Meeting

TO: Broderick Johnson ( CN=Broderick Johnson/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Janet Murguia ( CN=Janet Murguia/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Vicky\_Stroud ( Vicky\_Stroud @ ed.gov@inet [ UNKNOWN ] )  
READ:UNKNOWN

TO: Barbara Chow ( CN=Barbara Chow/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Michael Cohen ( CN=Michael Cohen/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Gene B. Sperling ( CN=Gene B. Sperling/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

CC: Sandra Yamin ( CN=Sandra Yamin/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: Mindy E. Myers ( CN=Mindy E. Myers/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: Peter A. Weissman ( CN=Peter A. Weissman/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TEXT:

We will be having the weekly Education Strategy Meeting on Thursday,  
September 24, at 5:15 p.m. in Bruce Reed's office, 2 Floor/West Wing.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:22-SEP-1998 15:30:50.00

SUBJECT: Thursday economic event with new income/poverty numbers

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

CC: Andrea Kane ( CN=Andrea Kane/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Christa Robinson ( CN=Christa Robinson/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Paul J. Weinstein Jr. ( CN=Paul J. Weinstein Jr./OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TEXT:

Elena asked me to attend this event meeting in Maria's office regarding the Thursday event. The plan is to have the President appear flanked by his economic advisers and make a short speech about the new income / poverty numbers (about 11:10) Besides the usual why-my-economic-policies-have-been-good-for-America, the speech will mention why it's important we have an accurate Census (these are Census numbers although not ones that would be affected by sampling) and why we must be fiscally responsible and save Social Security first (this is the day of the House Social Security/taxes vote). There will probably be a Yellen/Sperling briefing afterward. Orszag and Siewart are the leads but we'll keep our eyes on it too.

Andrea and others are getting the briefing now on the details of the numbers, but NEC had gotten pretty strong advance word that they would be good. The health insurance numbers do not come out Thursday, but next Monday.

# Withdrawal/Redaction Marker

## Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Fred Duval to Elena Kagan. Personal. (1 page)	09/22/1998	P6/b(6)

### COLLECTION:

Clinton Presidential Records  
Automated Records Management System [Email]  
WHO ([Kagan])  
OA/Box Number: 500000

### FOLDER TITLE:

[09/18/1998-09/23/1998]

2009-1006-F  
vz135

### RESTRICTION CODES

#### Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]  
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]  
P3 Release would violate a Federal statute [(a)(3) of the PRA]  
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]  
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]  
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

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RR. Document will be reviewed upon request.

#### Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]  
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]  
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]  
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]  
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]  
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]  
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]  
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:22-SEP-1998 16:00:12.00

SUBJECT: Update on Nazi Benefits

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TEXT:

Deborah Mohile of Public Liaison wholeheartedly agreed we need a full vet before we support this bill. Due to the holidays, this is still underway.

Also, we caught one part of DOJ mistakenly undoing the work of another part of DOJ. The Special Investigations unit wanted to propose an edit to the Hill that would result in the "federal public benefits" denied to Nazis as slightly different than the "federal public benefits" denied to immigrants. Once I pointed this out to the DOJ policy shop, they persuaded Special Investigations to use the same definition.



RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia Dailard ( CN=Cynthia Dailard/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME: 22-SEP-1998 17:09:13.00

SUBJECT: cloture vote on CCPA

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ: UNKNOWN

TO: Neera Tanden ( CN=Neera Tanden/OU=WHO/O=EOP @ EOP [ WHO ] )

READ: UNKNOWN

TO: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ: UNKNOWN

TO: Nicole R. Rabner ( CN=Nicole R. Rabner/OU=WHO/O=EOP @ EOP [ WHO ] )

READ: UNKNOWN

TO: Jennifer L. Klein ( CN=Jennifer L. Klein/OU=OPD/O=EOP @ EOP [ OPD ] )

READ: UNKNOWN

TEXT:

The Senate failed to achieve cloture on the Child Custody Protection Act by a vote of 54-45.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Julie A. Fernandes ( CN=Julie A. Fernandes/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:22-SEP-1998 17:59:06.00

SUBJECT: H2A -- chart

TO: Sally Katzen ( CN=Sally Katzen/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Maria Echaveste ( CN=Maria Echaveste/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Shannon Mason ( CN=Shannon Mason/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Marjorie Tarmey ( CN=Marjorie Tarmey/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TEXT:

Elena/Sally/Maria:

I am attaching another copy of the chart that Ceci and I prepared that compares the various H-2A reform proposals, noting the views of the DOL and USDA on each.

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS\_EXT:[ATTACH.D42]MAIL48570356F.226 to ASCII,

The following is a HEX DUMP:

FF575043572B0000010A02010000000205000000D3FD0000000200002EEC9939B081D20F92C7F3

## MEMORANDUM FOR ELENA KAGAN AND SALLY KATZEN

FROM: JULIE FERNANDES AND CECILIA ROUSE

SUBJECT: ASSESSMENT OF H-2A "IDEAS INVENTORY"

DATE: March 11, 2010

Attached is our assessment of the positions of USDA and DOL regarding the proposals put forth in DOL's "ideas inventory." The shaded boxes indicate important proposals for which there is agency disagreement and thus should be discussed at today's meeting. We have also attached a list of the current program requirements that includes definitions of the most important terms.

In order to better understand the agencies' positions, it is useful to understand the underlying policy tensions. Growers see themselves as having a choice between three categories of workers: legal U.S. workers, illegal workers, and H-2A workers. Which category they draw from is almost exclusively determined by total cost. For example, if the total cost of hiring a U.S. worker (including wages, taxes, housing, etc.) is higher than the total cost of hiring an H-2A worker, the grower will hire the H-2A worker. Therefore, the total compensation offered by the H-2A program becomes the effective total compensation ceiling for U.S. workers. In addition, the presence of large numbers of illegal farmworkers distorts the labor market such that the growers' response to an inability to find sufficient legal U.S. workers is to hire illegal workers, rather than increase wages or improve working conditions. Thus, though we may want to require fair wages and working conditions in the H-2A program, if the cost of using the program is too high, the growers will hire undocumented workers.

USDA's goal is to provide a steady, reliable source of farmworkers for U.S. growers. USDA believes that the domestic labor force can never completely satisfy the labor needs of agriculture, particularly during peak times, and therefore there will always be a need for temporary foreign agricultural workers. In a world in which the INS is increasingly cracking down on the employment of undocumented workers, the USDA (and the growers) would prefer that the foreign workers that they employ be authorized to work. Their goal is thus to set a wage (or total compensation) floor that is low enough that growers will readily use the H-2A program (rather than hire undocumented workers), but that is high enough to continue to attract existing U.S. farmworkers. However, they believe that an H-2A program that would set the wage (or total compensation) floor high enough to attract many more U.S. workers would drive growers into the illegal labor market.

DOL is concerned that a low wage (or total compensation) floor becomes a low ceiling for U.S. workers and therefore hurts these already impoverished workers. They are not as convinced that the domestic labor force could never satisfy growers needs at a reasonable wage; rather, they argue that agricultural wages have been kept artificially low because of the large presence of undocumented workers. Labor believes that if agricultural wages were allowed to rise,

additional U.S. workers would be willing to work in agriculture. They also assert that we can do a better job of facilitating matches between workers and employers that would give domestic farm workers more stable employment and growers access to a steady supply of workers.

As you read through the following list of proposals, you will notice that in many areas (e.g., wages, housing, transportation) the issue is whether the proposal increases the total cost to the employer or shifts those costs to the government or the farmworker. USDA generally opposes reforms that would increase grower costs. The Labor Department generally opposes reforms that transfer costs to the government or the farmworker, and favors reforms that aim at improving labor conditions or wages for U.S. and foreign farmworkers. Because the focus is on total costs (with wages and housing being the most significant areas of concern) we cannot decide on individual reform components in isolation.

***Requirements (and Definitions) under the Current H-2A Program***

- **Recruitment:** The agricultural employer must engage in independent positive (i.e., active) recruitment of U.S. workers, including newspaper and radio advertising in areas of expected labor supply. Such recruitment must be at least equivalent to that conducted by non-H-2A agricultural employers to secure U.S. workers.
- **Wages:** Employers must pay H-2A workers the “**adverse effect wage rate**” (AEWR), the applicable prevailing wage rate, or the statutory minimum wage rate, whichever is higher. The AEWRs are the minimum wage rates which the DOL has determined must be offered and paid to U.S. and H-2A workers, and they are established for each state. The region- or state-wide AEWR for all agricultural employment for which H-2A certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the USDA.<sup>1</sup> The AEWRs are designed to prevent the employment of these nonimmigrant alien workers from adversely affecting the wages of similarly employed U.S. agricultural workers.
- **Housing:** The employer must provide free and approved housing to all workers, both foreign and domestic, who are not able to return to their residences the same day.
- **Meals:** The employer must provide either three meals a day to each worker or furnish free and convenient cooking/kitchen facilities. If meals are provided, then the employer may charge each worker a certain amount per day for these meals.
- **Transportation:** The employer is responsible for the following types of transportation for workers: 1) After a worker has completed fifty percent of the work contract period, the employer must reimburse the worker for the cost of transportation and subsistence from the place of recruitment to the place of work; 2) The employer must provide free transportation between any required housing site and the work site for any worker who is eligible for such housing; 3) Upon completion of the work contract, the employer must pay return transportation to the worker’s prior residence or transportation to the next job.
- **Workers’ Compensation Insurance:** The employer must provide Workers’ Compensation or equivalent insurance for all workers, both foreign and domestic.

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<sup>1</sup>Some 1998 AEWRs: California, \$6.87; Florida, \$6.77; Georgia, \$6.30; Hawaii, \$8.83; Kentucky, \$5.92; and Ohio, \$7.18.

- **Three-fourths Guarantee:** The employer must guarantee to offer each worker employment for at least three-fourths of the workdays in the work contract and any extensions. In applying this guarantee and determining any additional wages due, the following facts must be established: 1) The beginning and ending dates of employment; 2) The number of workdays between the established beginning and ending dates of the guarantee period; and 3) The hours of worktime for the guarantee. The guarantee is then established by computing seventy-five percent of the established total hours of work time in the contract period. Note that the employer may not count any hours offered on such days in which the worker refused or failed to work.
- **Fifty Percent Rule:** The employer must employ any qualified U.S. worker who applies for an available job until fifty percent of the contract period has elapsed.
- **Tools and Supplies:** The employer must furnish at no cost to the worker all necessary tools and supplies, unless it is common practice for the worker to provide certain items.
- **Labor Dispute:** The employer must ensure that the available job for which the employer is requesting H-2A certification is not vacant due to a strike or lockout.
- **Certification Fee:** A fee will be charged to an employer granted temporary alien agricultural labor certification. The fee is \$100, plus \$10 for each available job certified, up to a maximum fee of \$1,000 for each certification granted.
- **Farm Labor Contractors (Crewleaders):** A farm labor contractor is an organization or entity that either supervises, recruits, transports, houses, or solicits farm labor other than the owner of the work site. Bona fide registered farm labor contractors may be eligible to apply for and receive H-2A certification, although they generally deal with domestic laborers. Farm labor contractors would be required, as employers, to provide all the minimum benefits specified by the H-2A regulations, including the three-fourths guarantee and the fifty percent rule.

<u>Reform Proposal</u>	<u>WH</u>	<u>USDA</u>	<u>DOL</u>
<b>Worker Recruitment</b>			
Require "positive recruitment" of U.S. farmworkers by growers only in areas where DOL finds that there are a significant number of qualified workers willing to make themselves available for employment at the time and place	Y	okay	DOL implemented this administrative change.

needed.			
Count as “available” for employment only those U.S. workers who are identified by name, address, and SSN	Y	okay	DOL implemented this administrative change.
Post employers’ H-2A job orders on America’s job bank	Y	USDA would not oppose.	DOL proposal; requires job order simplification.
Strengthen the MSPA program of registering farm labor contractors to require bonding; allow H-2A employers to require bonding as a condition of employing a farm labor contractor.	Y	DOL and USDA agree to support this.	
Allow H-2A growers to include a bonding requirement for FLCs they employ.	Y	DOL and USDA agree to support this (essentially the same as the previous proposal).	
Eliminate the requirement that farm labor contractors must be used by H-2A growers if the use is the prevailing practice in the area.	N	USDA generally wants more flexibility for growers, however they are unlikely to strongly oppose DOL’s opposition.	DOL strongly opposes because the goal is for the H-2A program to track prevailing practices in areas of labor protection.
Provide an exception from current program requirement to use FLCs for any FLC who has a demonstrated history of employing illegal workers or other serious labor abuses.	Y	USDA agrees.	DOL regulatory initiative.
Require use of FLCs as recruitment mechanism whenever use is “common” or “normal” (not prevailing) in an area.	N	USDA will likely oppose because grower regulations should involve the highest standard.	DOL generally supports prevailing practice. This is not likely an issue about which DOL will take a strong position.
Require payment of competitive rates for FLC services.			
<b>Employment Eligibility Verification</b>			
DOL work with Congress and other affected agencies to develop a reliable means of verifying individual’s authorization to work as they are hired.	Y	USDA would likely agree because of their goal to decrease growers’ dependence on undocumented workers as long as growers had increased access to H-2A workers.	DOL agrees.

Create a national employment eligibility verification system so that employers can check on the legal status of domestic workers who are hired during the H-2A process.	Y	INS currently has a pilot program to do just that which we support and has encouraged growers to participate in the pilot.	
Require growers using the H-2A program to use INS pilot employment eligibility verification system.	Y	USDA would likely agree as part of an overall package.	DOL would likely agree.
Growers only responsible for recruiting and hiring farm workers in the U.S. through the DOL-administered Registries (and contacting former employees); Registries are responsible -- and have only 14 days -- to locate, contact, verify employment eligibility, and refer U.S. workers to growers seeking foreign farm workers; failure to refer timely or to refer sufficient workers allows direct application for workers to Secy of State.	N	USDA likely supports this provision because it reduces the burden on employers.	DOL hates this provision because it leaves the burden of recruitment entirely to the Federal government.
Secy of State authorizes additional H-2A workers if Registry-referred workers fail to report; are "not ready, willing, able, or qualified" to do the work; or, abandon or are terminated from employment.	N	USDA likely supports this provision because it provides growers with quick access to H-2A workers if they have cannot recruit U.S. workers through the registry.	DOL would likely hate this provision because, again, it centralizes all recruitment through the Registry and absolves growers of any additional recruitment before applying for H-2A workers.
Pilot test new Registry of available U.S. farm workers; growers share responsibility for positive recruitment of U.S. farm workers.	Y	USDA would likely support a pilot of a mechanism to facilitate the hiring of U.S. workers for growers.	DOL supports a pilot of such a registry (as long as growers continue to share part of the responsibility for recruitment).
Require employers' "positive recruitment" to include: providing an 800 contact telephone number and accepting "collect" calls from worker job applicants; contacting other potential employers to link a series of job opportunities; and developing a long-term recruitment plan to reduce dependence on foreign guestworkers.	N	USDA would likely oppose such positive recruitment measures because it increases the costs to employers.	DOL would likely support these measures, but are unlikely to require that they be part of a final package.
H-2A workers covered by the MSPA, but disclosure only required at time of visa issuance.	N	USDA likely supports this measure.	DOL supports having H-2A workers covered by MSPA but likely believes that the workers should be informed of their rights when recruited rather than at the time of visa issuance (which could be after the worker has



			incurred significant costs).
DOL rulemaking regarding possible consolidation of agricultural job orders in the Interstate Clearance System.	Y	USDA agrees.	DOL agrees
<b>Productivity Standards</b>			
H-2A employers allowed to set minimum production standards after a "3-day break-in period."	?		
Employer-established productivity standards and quality requirements should be permitted only if they are the prevailing practice among non-H-2A employers, are bona fide, objective, justifiable, fully disclosed and implemented on a fair and equitable basis.		USDA generally opposes any additional regulations or restrictions on growers and would therefore likely oppose this idea.	DOL would likely support this idea as it is aimed at protecting U.S. workers.
<b>Experience (and related) Requirements</b>			
H-2A employers should be allowed to specify "agricultural experience" as a condition for hiring U.S. farm workers.		USDA would likely support because it ultimately gives the growers more flexibility in who they hire.	DOL would likely oppose arguing that it gives growers too much discretion for jobs that generally do not require substantial experience.
Disallow job qualifications, experience and reference requirements unless they are the prevailing practice among non-H-2A employers and are otherwise job-related and bona fide.		USDA would likely oppose for the same reasons that they would support specifying "agricultural experience."	DOL would likely support for the same reasons they would oppose specifying "agricultural experience."
Allow H-2A workers to move from one certified H-2A employer to another, with the final employer responsible for return transportation costs.	Y	This is current law.	According to DOL, this is current law.
Prohibit H-2A job orders that consolidate seasons and different crops.		USDA would likely oppose because consolidation would potentially decrease costs to growers by allowing them to group together and reduce the number of individual	DOL would likely support because it protects U.S. farm workers by requiring growers to submit individual applications.

		applications.	
Prohibit use of the H-2A program in designated labor surplus areas.	N	USDA may not disagree in theory but would likely be concerned that the designation of a labor surplus areas would not necessarily reflect the short-term labor needs of particular growers with particular crops.	DOL would support this in theory, however it would likely have concerns about how areas are designated.
<b>Wages and Costs</b>			
Revise H-2A regulations regarding the 3/4 guarantee to remove incentives to growers to overestimate the contract period.	Y	Agrees.	Agrees.
Consider applying the 3/4 guarantee incrementally during the contract period.	N	Oppose.	Opposes.
Eliminate the 3/4 guarantee	N	Doesn't like the 3/4 guarantee b/c wants growers not to have to pay workers if their crop is disappointing (less work in fact than they anticipated). However, they understand that this is a <u>more</u> generous rule than under the MSPA (the statute that governs non-H2A farmworkers) and thus agrees that this reform is no good.	Opposes the elimination of the 3/4 guarantee (b/c protects farmworkers by ensuring that the work that they are promised in the contract is provided, thus allowing them to make fairer judgments when choosing between jobs). However, not sure that 3/4 is a magic number.
Modify the 3/4 guarantee to allow H-2A growers to limit the contract period to "duration of crop activity" and terminate the contract period offered due to changes in market conditions.	N	Agree that effectively eliminates the 3/4 guarantee.	Agree that effectively eliminates the 3/4 guarantee.
Eliminate AEWR and instead require payment of 105% of prevailing wage for crop in the area.		Yes. They are in favor of eliminating the AEWR b/c it provides a wage higher than the prevailing wage for some H2A workers. USDA does not agree that the prevailing wage is depressed by the presence of illegals in the	No. The AEWR is calculated to compensate for the presence of illegals that depress the prevailing wage rate. It calculates the required wage as the state-wide average of all non-managerial farmworkers, thus dispersing

		workforce, but does not object to a small sweetener to the prevailing wage to replace the AEW (like the 105% proposed by Wyden)	<p>the impact of illegals. If the wage is calculated based on 105% of prevailing, it will still be a depressed wage in those industries or areas where the presence of illegals is large. However, DOL agrees that the AEW is a bit of an odd way to calculate, and that there is no magic to it.</p> <p>They want some way to calculate the wage that compensates both for the presence of illegals (wage depression) and for the fact that growers do not pay H2A workers FICA/FUDA (approx. 8%). AEW may not be magic, but 105% of prevailing does not even get the wage = to that of non-H2A workers.</p>
Eliminate AEW and require payment of the prevailing wage for the crop in the area.		USDA likes this option. They want the H2A wages to be the same as the prevailing wage in the crop and area. They dispute that wages are depressed b/c of the presence of illegals. In addition, they maintain that if the program requires a higher wage than what is being paid locally, the growers will not use the H2A program and will access the undocumented workforce.	<p>Labor hates this idea, for the reasons above. The wage paid to H2A workers should be a fair wage -- defined as one that compensates for the wage depression caused by the presence of illegals. Labor believes that growers should have to go to the U.S. market first, offer a fair wage and good conditions, and if not successful, access an H2A market that compels them to pay a fair wage under good conditions.</p>
Only require payment of federal minimum wage (not AEW) as a "training wage" for inexperienced workers during a training period (in the K).		Another way to undercut the AEW that USDA likes.	Another way to undercut the AEW that Labor hates.
Require increases in piece rates to reflect increases in the AEW.	Y	USDA would likely not like. This would raise the total wage cost.	Labor would like. Most farmworkers are paid by the piece, so a conversion of the piece rate to the AEW is consistent with their desire to keep or strengthen the AEW.
Prohibit H-2A employers from increasing productivity	Y	USDA would likely not like b/c this would raise the total wage cost and require farmers to	Labor would like this. It discourages the farmers from changing productivity levels in

requirements to offset increases in the AEW		set productivity levels early in the season and not allow conditions to change expectations.	ways designed to keep the wage low.
Change AEW methodology to set at 90th percentile of local market wage or 80th percentile of regional market wage.		They are generally opposed to any change that would increase the overall wage cost. However, they may be open to setting the wage at some modest percentage higher than the local prevailing wage. Thus, though these numbers are high, there may be room to work here.	Labor is generally in favor of calculations that result in a higher wage, though they see no magic in the AEW. The conflict with USDA would be over how high to set the percentile.
Apply AEW to sheepherders.	?	Opposed. Sheepherders are different.	They want more for the sheepherders.
Disallow any wage deductions by H-2A employers that reduce earnings below the highest required wage.		USDA would favor changes along these lines. They want to consider total cost of employing an H2A worker and compare that to total cost of hiring a non-H2A worker (legal or illegal).	Oppose. Though Labor is open to discussions that take into account total cost to growers to use the program, they do not want the farmworker wages to be too low.
Prohibit H-2A employers from fixing uniform wage rates across large areas -- states or regions.	?		
Reforms to the 50% rule as recommended by OIG.	Y	USDA agrees.	Labor agrees.
Modify existing 50% rule to only require hiring of local workers (that reside within commuting distance) but extend this obligation to the entire period of the contract.	N	Oppose. Blocks out of state U.S. crews from work.	Oppose. same reason.
Eliminate 50% rule except for workers referred through the registries <i>unless</i> there are other substantially similar job opportunities in the area.	Y	Would agree to apply the 50% rule only where equivalent jobs are not available in the area. This is currently the rule where the association in the employer. Also agrees that the 50% rule is good for U.S. workers.	Agrees.
H-2A workers should be covered under the State Unemployment Insurance System	Y	This could increase grower cost, but unlikely that they would oppose this.	Likely favor, though there is a question of whether this would only apply where U.S. farmworkers are covered under state law.
H-2A employers expressly authorized to pay hourly wage,	N	USDA might like this b/c it gives flexibility to	Labor will hate this, b/c they have asserted that

piece rate, task rate, or "other incentive payment method, including a group rate," irrespective of the prevailing payment method.		growers.	the task rate is too variable to be susceptible to a prevailing wage determination. There are also likely problems with the "group rate."
H-2A employers are in compliance with the wage requirements if "the average of the hourly earnings of the workers, taken as a group," equals the required hourly wage.	N	USDA may like this, but fairness concerns weigh against it.	Labor will not like this b/c it allow the growers to pay some workers less than the required hourly wage.
Prohibit payment by "task rate" or other variable rate method of payment.	Y	May not like b/c like grower choice.	Would likely favor. Have spoken out against the task rate.
Protect earnings level when employers convert from a piece rate to an hourly rate.	Y	USDA likely would not oppose, b/c it only holds the rate the same.	Protecting wage rates would seem a good thing to Labor.
For employers converting from hourly rate to piece rate, set piece rate to assure earnings at least 30% above AEWR.		This is another way to sweeten the wage that USDA will likely oppose.	This is another way to sweeten the wage that DOL will like, but it is -- in a way -- difficult to defend (unless you assume that growers are setting piece rates at levels well below the AEWR conversion).
H-2A workers apply for transportation reimbursement to the government (rather than the employer).		This is a shift of cost from the grower to the government. USDA will like this.	Labor does not like, for the same reason. However, as long as the cost to the grower remains the same for a U.S. worker (working under fair wages and good conditions) and an H2A worker, DOL will not fight if some overall costs are picked up by the government (as long as the cost is not coming out of their budget!).
H-2A workers may apply to the employer for transportation reimbursement, but employer not obligated to provide such reimbursement.	N	USDA may like this, b/c lowers cost for the grower. However, growers are used to paying transportation costs in this program. This cost is just part of the overall cost, and thus would go into the overall cost calculation (which, according to USDA, determines whether a grower will participate or hire illegals).	DOL will oppose. They want H2A workers to have transportation paid for. However, as noted, they may be amenable to a system that has the government assume some of this cost.

H-2A workers not eligible for transportation reimbursement if distance traveled is less than 100 miles.	?	This is part of the cost calculation. USDA may think that this is a small step in the right direction.	Labor would likely oppose as eroding the transportation guarantee. Not likely a big issue for either side.
Pilot program for transportation advances for U.S. farmworkers.	Y	USDA would likely be open to this.	DOL would also likely be open to this (a <i>small</i> pilot).
Require H-2A employers to provide travel advances to U.S. farmworkers.			
Charge fee = FICA/FUDA taxes to finance certain program activities (housing; admin. costs; transportation)	Y	USDA is in favor. The question is how high is the fee.	Labor is not opposed to a fee that would fund certain activities. The question is how high is the fee (more than FICA/FUDA?)
Impose user fees that reflect the cost of the H-2A program.		First, we are not sure how to calculate this cost (particularly, the cost of housing). Even if we could, USDA would be concerned that it would be too high (and thus cost prohibitive for growers to use). They are open, though, to a modest user fee.	As noted, Labor is also open to a user fee. However, it is not clear that they would want to push for a fee that was a total reimbursement (making it cost neutral for the government). That would surely make it too expensive for growers to use.
Allow H-2A workers to opt out of the employer-provided meal plans.		Unclear how they would react to this.	Labor would likely think this is o.k., b/c under the current system the cost of meals is deducted from the farmworker wages. However, there is some concern about making sure that workers don't opt out and then not have adequate food for the harvest.
Require first time H-2A employers to maintain wages and working conditions previously offered.		USDA would oppose this as restricting grower flexibility.	Labor would likely favor, but it could be hard to administer.
<b>Housing</b>			
Apply local or state (rather than federal) housing standards to housing provided by H-2A growers.		USDA would likely favor (local laws could give more flexibility), but it is just a race to the bottom. They could be convinced that federal	Labor would likely oppose. Would want federal standards to apply in this federal program. Also, would assume that federal

		standards should apply in a federal program.	standards are stricter.
H-2A employers permitted to charge workers up to fair market value for the cost of maintenance and utilities provided.		USDA likes as a way to reduce cost.	Labor would consider shifting some maintenance or modest utilities fees to the worker.
H-2A employers can charge workers reasonable amounts (up to \$25 per week) for the cost of maintenance, utilities, repair and clean-up of housing provided.		Same	Same
H-2A employers can charge a security deposit (up to \$50) to protect against "gross negligence or willful destruction of property."		USDA likes as a way to share some costs with farmworkers and make them responsible for taking care of grower-provided housing.	Labor in general would not like, b/c unnecessary under the current law (which allows for worker to pay for damage in some circumstances).
H-2A employers may require reimbursement (wage deduction) from responsible worker of reasonable cost of repairing damage to housing provided that is "not the result of normal wear and tear."	Y	According to DOL and USDA, this is current law.	
Reduced user fee to H-2A growers providing housing.		This is just another way to think about total cost to growers. If we have a user fee, we have to think about what we want it to pay for.	
H-2A employers may provide a "minimum housing allowance" in lieu of housing, unless (no earlier than 8 years after enactment) a state Governor certifies that there is not adequate farm worker housing available.		USDA would like as a cheaper way to meet the housing requirement. However, they may be open to the argument that this could result in strongly adverse impacts on local communities (migrant workers sleeping in parks, etc.)	Labor hates this. First, there is a shortage of affordable housing generally (which is particularly acute in rural areas). Second, it is unreasonable to expect a migrant worker from another country to be able to rent any housing on his own with a federal voucher.
H-2A employers may provide a "minimum housing allowance" in lieu of housing, but must also arrange for decent housing at the allowance level.		This option is really no different from the current system, except that the method of payment is a voucher, rather than directly paid for by the grower. Thus, to the extent that USDA does not like the current system (b/c the cost associated with providing housing is very high), they would not like this.	This is better than above, but does not address the fact of great shortages of decent, affordable housing in rural areas. Under this system, what happens if housing is not available? Labor would still like some kind of requirement that the employer provide for housing where it is not available.

Require growers to provide free housing to all U.S. farm workers (including local workers).		USDA would not like this additional cost burden on the growers.	Labor would like as an ideal, but unrealistic to add this additional burden on growers (unless heavily subsidized by the federal government).
Require H-2A growers to make their housing available for U.S. workers who arrive early.		Can't see the objection to this one.	Labor likely is in favor.
<b>Enforcement</b>			
Extend to Wage & Hour the authority to debar violating employers who commit serious labor standards or H-2A program violations.	Y	USDA and DOL agreed to this during our earlier process. Will be part of upcoming rulemaking.	
Issue final H-2A regulations.	Y	DOL has agreed to this.	
Narrow DOL enforcement to only allow investigations only pursuant to a complaint.	N	USDA may like this, but not sure. It would be difficult for them to argue in favor of less enforcement, when there is so little already.	DOL would hate this. They need more not less enforcement money and tools.
Institute a 12-mo. statute of limitations on complaints		USDA likely would favor.	DOL may think this is o.k.
Provide a "reasonable cause" threshold for investigations.		USDA would likely favor.	DOL may want to reserve the right to do random inspections.
Limit penalties to certain types of violations.		Unclear what this recommendation means.	
Institute a three-year and permanent debarment period for repeat violations.		USDA would likely favor.	DOL would likely favor, unless this is substantially less than current law.
Require hiring of former H-2A workers (where allowed) to offset disincentives to complain about labor violations.		USDA would oppose. This too greatly limits grower flexibility in hiring.	Not sure if DOL would see this as an effective tool to offset disincentives to complain about labor violations.
Require disclosure of terms and conditions of employment to be given to workers in their native language in plain		Can't imagine opposition, unless it costs a lot.	Labor would likely favor.



language.			
More timely initiation and completion of DOL enforcement actions.		We are all in favor of timeliness.	
<b>Immigration Management</b>			
H2A worker ineligible for continued participation in the program if, during the prior 5 years, the worker violates the terms of admission to the U.S.		USDA would not likely have an opposition to this in theory.	DOL would not likely have an opposition to this in theory.
H2A workers admitted to the U.S. have 14 days after termination of employment contract to search for other legal work in the U.S.	Y	USDA would not likely have an objection.	DOL would not likely have an objection.
H2A workers admitted must be issued fraud-resistant identification/work authorization documents.	Y	USDA would not likely have an objection.	DOL would not likely have an objection.
An employer may file for extension of stay to employ an H2A worker already in the country and may legally employ such a worker from the date application is made.		USDA would likely support this idea because it provides growers with easy and quick access to H-2A workers.	DOL would likely oppose this idea because it would allow growers to get around the recruitment requirement.
AG study whether H2A workers timely depart the U.S. after period of authorized employment.	Y		
Legalization for H2A workers who complete at least 6 months employment in the U.S. under the H2A program for 4 consecutive years in compliance with program requirements.	N	USDA would not likely oppose this idea. However, it does not advance their goals because they believe that growers need a ready supply of foreign workers to meet short-term labor needs. Once legalized these foreign farmer workers would likely move into other sectors of the labor market.	DOL is opposed because it a) it gives the employers additional leverage over the workers by empowering them to hold the promise of green card out to the foreign worker and b) it undercuts our immigration policy.
Require withholding of percentage of H2A workers wages, deposited in accounts reclaimable within limited time period in home country, as incentive to repatriate.	N	USDA supports incentives to repatriate and if they believed that if this would work they would support it.	DOL would likely oppose this because 1) there is no guarantee that the workers would actually receive these wages and 2) there is no evidence that this amount of money would be an

			incentive to repatriate.
User fee offsetting FICA/FUDA advantage used as repatriation incentive	N	Same position as above.	Same position as above.
Require entry-exit control system for all H2A workers.	Y	If this were possible, USDA and DOL would support it. However, at this time INS is unable to operate an effective exit and entry control system on the land borders.	
<b>Other issues</b>			
Expand scope of the H2A program to include agricultural -- meat/poultry -- processing employment.			
Secretary authorized to establish cap on number of H2A visas issued pursuant to application from "independent contractors, agricultural associations and such similar entities."	Y	USDA would likely support this as long as it was a high cap.	DOL supports this provision since 80% of all H-2A applications are from independent contractors or agricultural associations.
Comprehensive report by AG and Secretaries of Labor and Agriculture.	Y		
All H2A employers non-wage practices and benefits should be subject to prevailing practice standards.		USDA will want more flexibility for growers.	DOL would likely favor tying all practices and benefits to prevailing practice standards.
Assure that U.S. and H2A workers are truly allowed to choose their employer			
Cap the number of visas available under the H2A program.		See above.	See above.
<b>Administrative Processes</b>			
Consolidate DOL certification and INS petition approval into one process administered by DOL	Y		

Consolidate responsibility within DOL in Wage & Hour for post-application examination and enforcement of employer compliance with H2A program requirements.	Y		
Government -- not employer -- responsible for reimbursing transportation costs of eligible workers.	Y		
Require employers' H2A labor certification applications to be submitted 45 (rather than 60) days before the employer "date of need."	Y		
Reduce lead time for employer applications to 30 (rather than 60) days before "date of need."	Y		
Consistently meet 7 day deadline -- after initial receipt of employer's labor certification application -- to give written notification to the employer of deficiencies precluding adjudication of the application.	Y		
Consistently meet existing 20 day deadline -- prior to employer's date of need -- to issue approved certifications	Y		
After consolidation of certification and petition adjudication process in DOL, change the law to set deadline for DOL approval of employers' application to 7 days before date of need.	Y		
Reduce the deadline for employer-provided housing to be available for inspection to 15 (rather than 30) days before the date of need.	Y		
Change the current labor certification to one based on employers' attestations to comply with program requirements.	?	Unsure how this changes employer obligations.	

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Kevin S. Moran ( CN=Kevin S. Moran/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME: 22-SEP-1998 18:38:22.00

SUBJECT: Budget Meeting

TO: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ: UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ: UNKNOWN

TO: Cathy R. Mays ( CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [ OPD ] )

READ: UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )

READ: UNKNOWN

TEXT:

Elena... You were right. I am bad at this. You should be on the list. k

----- Forwarded by Kevin S. Moran/WHO/EOP on 09/22/98

06:37 PM -----

Kevin S. Moran 09/22/98 04:33:04 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Budget Meeting

Erskine will hold a budget meeting focusing on the Democratic tax package tomorrow (9/23) morning from 10:00 to 10:45. The following are invited to attend:

John Podesta  
Maria Echaveste  
Rahm Emanuel  
Doug Sosnik  
Paul Begala  
Gene Sperling  
Chuck Marr  
Larry Stein  
Martha Foley  
Janet Yellen  
Jack Lew  
Sylvia Mathews  
Ron Klain

Treasury Reps

Message Sent

To:

Sara M. Latham/WHO/EOP  
Michelle Crisci/WHO/EOP

Sandra L. Via/OMB/EOP  
Robert L. Nabors/OMB/EOP  
Janet L. Graves/OMB/EOP  
Peter A. Weissman/OPD/EOP  
Melissa G. Green/OPD/EOP  
Marjorie Tarmey/WHO/EOP  
Leslie Bernstein/WHO/EOP  
Jessica L. Gibson/WHO/EOP  
Scott R. Hynes/OVP @ OVP  
Carole A. Parmelee/WHO/EOP  
Carolyn T. Wu/WHO/EOP  
Martha Foley/WHO/EOP  
David W. Beier/OVP @ OVP  
Adrienne C. Erbach/OMB/EOP  
Dawn L. Smalls/WHO/EOP  
Paul E. Begala/WHO/EOP  
Dominique L. Cano/WHO/EOP  
Alice H. Williams/CEA/EOP  
Carolyn T. Wu/WHO/EOP  
Carole A. Parmelee/WHO/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Andrea Kane ( CN=Andrea Kane/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:22-SEP-1998 19:45:46.00

SUBJECT: New Poverty Number highlights -- for morning meeting

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

Here's are some of the highlights:

Median household income up 2% (\$700) from 96 to 97

Biggest income gains for blacks (4.3%) and Hispanics (4.5%),

Biggest income gain in the South, where incomes are still lowest.

Poverty rate down 3% from 96 to 97 (13.7% to 13.3%)

While the number of poor people went down almost 1 M, Census doesn't consider this statistically significant; looks like number of poor went down almost 4 M from peak in 1993 (from 39.3 M to 35.6 M).

Biggest improvements in poverty rates for blacks (2%) and Hispanics (2.3%)

Both income and poverty now back at 1989 level.

Poverty rates went down for all age groups -- child poverty under 20% for 1st time since 1989, but barely...it's 19.9% and I think Census is characterizing it as unchanged (20.5% in 1996). At least it counters fear that welfare reform would make it worse (though this only reflects 1997).

Income inequality unchanged or worse depending on which measures used.

Orszag is now pouring through the numbers. He thinks they look great and is working on putting them in glowing historical terms.

We don't yet have from Census the number of 1997 welfare recipients who were employed in March 1998, but I'm trying to get it (these data are not part of the official package released on Thursday -- they are available on a 'special run' basis. Once we get these, we can update the trends on increased work among welfare recipients and update the 1.7 M welfare recipients are now working number. However, we may want to hold this to release with caseloads and participation rates in October (per October event memo).

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jordan Tamagni ( CN=Jordan Tamagni/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME:22-SEP-1998 22:07:56.00

SUBJECT: CHC Draft

TO: Estela Mendoza ( CN=Estela Mendoza/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Michelle Crisci ( CN=Michelle Crisci/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Jake Siewert ( CN=Jake Siewert/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Fred DuVal ( CN=Fred DuVal/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Janet Murguia ( CN=Janet Murguia/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Mickey Ibarra ( CN=Mickey Ibarra/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Paul E. Begala ( CN=Paul E. Begala/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Jonathan Orszag ( CN=Jonathan Orszag/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Jeffrey L. Farrow ( CN=Jeffrey L. Farrow/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Ann F. Lewis ( CN=Ann F. Lewis/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Maria Echaveste ( CN=Maria Echaveste/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:  
Draft 9/22/98 9:00pm

PRESIDENT WILLIAM J. CLINTON  
REMARKS FOR CONGRESSIONAL HISPANIC CAUCUS DINNER  
WASHINGTON, DC  
September 23, 1998

Acknowledgments: TK

Before we begin, I want to say a word about the terrible hurricane that has ripped through the Caribbean. [INSERT TK]

Now, I'd like to pay tribute to the two men we are honoring here tonight -- Representative Henry Gonzalez, and Representative Esteban Torres. □&Henry B□8 was more than a pioneer -- more than a brilliant

prophet on the need to make our economy work for ordinary people. With his stubborn insistence on standing on the House floor and standing up for principle, he has been a conscience for the Congress and the country. And we are very grateful. Esteban Torres is the best of the newest generation. From his days as a UAW shop steward to his days as chair of this caucus, he has fought for working people of all backgrounds. He has fought to make certain that economic growth benefits the people not only of this country but of Mexico as well.

For the six years in a row, I have looked forward to coming here -- to join in the energy and the commitment and the creativity of the fastest growing community in America. I know that the Vice President spent the evening with many of you last night at the Hispanic Heritage Awards. In so many ways, that rich heritage -- its values of family, faith, and community, of hard work, passion, and patriotism -- that is America's heritage, too. That legacy is at the heart of everything the Hispanic Caucus stands for -- and I have been honored to work alongside you for six years now. I'd like to take a moment to think back on all that we have accomplished together.

Together, we expanded the Earned Income Tax Credit and helped cut taxes for 15 million hard-working families -- including more than 1 million Hispanics. When the Republicans tried to slash it we said no. Together, we increased the minimum wage to give 10 million Americans -- including nearly 2 million Hispanic Americans -- a well-deserved raise. Now, I think it's time to increase the minimum wage again, and I am disappointed that yesterday the Senate voted against doing just that. We value families -- we should raise the value of the minimum wage.

Together we fought for and won the biggest increase in children's health care in more than three decades, to insure up to 5 million uninsured children across this country. We expanded the Head Start program to help our children get off on the right foot. We passed the Family and Medical Leave Act that gave millions of people the chance to take time off from work to care for an ailing parent or a newborn child.

Together, we have opened the doors of higher education with the HOPE Scholarship, with more Pell Grants, with tax credits for all higher education, with deductible student loans. Because of our efforts, everyone who is willing to work hard can go to college.

Together with the Vice President's leadership, we created more than 100 empowerment zones and enterprise communities, established community development banks, doubled small business loans to minorities and tripled them to women. In fact, businesses owned and operated by Hispanic women are the fastest growing category of small business in America today.

Together we shaped and passed the historic crime bill that is taking guns off our streets, putting more police on our streets and more prevention to keep our children out of trouble in the first place.

Together, we have built a stronger America: nearly 17 million jobs ... the lowest unemployment rate in 28 years ... the lowest Hispanic unemployment rate in a generation ... the fastest real wage growth in 20 years ... a record number of new small businesses every year ... violent crime down a record six years in a row ... and the lowest crime rate in 25 years. None of this could have happened without the leadership, the friendship, the ideas of the CHC.



I also want to give much-deserved credit to my staff. One good reason that things are looking so good for so much of America, is because my administration looks so much like America. One of my proudest accomplishments was assembling the most diverse administration in history -- as the Vice President just said, the greatest number of Hispanic American appointments in history. We are not successful in spite of our diversity -- we are successful because of it.

□,

Now, we must decide what we should do with this moment of prosperity and progress -- how can we use the resources it is producing and the self-confidence it is generating -- to build a brighter future for all our people?

Some people think that now is the time to kick back and relax. There is an old Mexican proverb that says: □&El que no siembra, no levanta □8 [ell kay no see-EM-bra no leh-VAHN-tah] -- He who doesn□,t sow, doesn□,t get a crop. We must use this time to sow the seeds of the future, and build the America we want for our children. And we cannot afford to rest.

I say we cannot rest until we save Social Security for the 21st Century. In a few days, we'll have the first balanced budget and surplus in 29 years. I believe we must not spend one penny of that surplus until we have saved Social Security. Some say we should use the surplus to pay for a tax cut. My balanced budget proves that we can reserve the surplus and still have targeted tax cuts for education ... to build and repair old schools ... to help families pay for child care ...to help small businesses take out pensions for their employees. And every one of those tax cuts is paid for in my balanced budget.

I say we cannot rest until all children in all communities have a world-class education. My balanced budget will help to hire 100,000 more teachers ... to reduce class size in the early grades to 18 ... to build or modernize 5,000 schools ... to hook up all our classrooms, even in the poorest neighborhoods, to the Internet ... to reward school districts for undertaking the kind of sweeping reforms we□,ve seen in cities like . . . Chicago ...to hire 35,000 more teachers to teach in the inner city and other struggling communities.

You and I know that education is the key to opportunity. But you also know that far, far too many Hispanic young people are not getting the education they need to succeed. That is why I have appointed the first-ever Presidential Advisory Commission on Educational Excellence for Hispanics. And that is why I have proposed the first-ever Hispanic Education Action Plan -- to reach out to Hispanic young people, and encourage them to stay in high school, to go on to college, and to reach for their dreams.

And you and I know that unless they learn English, those young people may never reach their full potential. That is why I fought for and won a 35% increase in funding for bilingual education in the balanced budget agreement. This will help 1,000 school districts all across America to improve teacher training and add extra classes for students who have not yet mastered English. We shouldn□,t have to fight divisive political battles to do what is right for our children.

I say we cannot rest until we protect our families with a strong, enforceable Patients□, Bill of Rights. Managed care can help make health care more affordable for more families. But with 160 million Americans in managed care today, we must say to these plans: Don□,t turn people away

from an emergency room. Don't turn people away from a specialist. Don't let an accountant make decisions only a doctor should make. Traditional care or managed care, every American deserves quality care.

We cannot rest while our communities are so thoroughly segregated by income and by race. The Federal Government should lead the way both in words and in deeds. First, we must put an end to unfair housing practices wherever and whenever they occur. I have asked HUD Secretary Cuomo to double the number of anti-housing discrimination cases. Next, I have directed Secretary Cuomo to work with you to undertake a major legislative overhaul so that our public housing admissions policies help deconcentrate poverty, mix incomes, and thereby mix people of all races and ethnicities. We cannot live together as a nation if we don't live together in our communities.

So let's pledge tonight to join together in the fight for public housing legislation that includes our historic admissions reforms -- reforms that will tear down the walls that divide and integrate public housing for generations to come.

We cannot rest until every community, every neighborhood, every block, every family has the chance to reap the benefits of our economic growth. That is why we must fund the empowerment initiatives the Vice President and Secretary Cuomo have worked so hard for, to expand funding for the community development banks, to step up enforcement of fair housing laws, to revitalize more urban brownfield areas, to restore summer jobs for our young people, and to provide housing assistance for those leaving welfare and entering work.

And we cannot rest until we have done even more to break the cycle of welfare dependency and despair. We should all be proud that we have the smallest percentage of our people on welfare in 29 years -- with nearly 4 million fewer people since I signed the welfare reform bill into law. We should all be proud that we made good on our promise to restore some benefits to legal immigrants. But we know that there is much to be done.

The pressures to move from welfare to work are intense -- and we know the transition can be particularly difficult for Hispanic women, many of whom lack language as well as job skills. I am committed to working with you to ensure that every individual has the tools to make this transition. That's why I fought for a \$3 billion Welfare to Work fund in the balanced budget, and \$50 million more for Welfare to Work transportation. And that is why I have proposed a \$21 billion child care initiative, to add to the \$4 billion we fought for in the Welfare bill.

I say we cannot rest until every American's voice can be heard in the halls of power -- that is one very good reason why we must ensure a fair and accurate Census. Some in Congress would have us ignore the best scientific methods for ensuring the most accurate count. This is unacceptable. In 1990, 5 percent of Hispanics were not counted; nearly 70,000 Hispanic children in Los Angeles County alone were left out. In the year 2000, we can -- and must -- do better. This is a fundamental issue, a crucial civil rights issue. Every American counts. We must count every American.

And while we're at it -- let's give the 4 million people of Puerto Rico the right to choose their own status. In December, they will go to the polls. The Senate Republican leaders say they will consider the results of that referendum. I say we should be bound by the results of that referendum. Puerto Ricans are American citizens -- let Puerto Rican people decide.

We cannot rest until we contain the economic turmoil in Russia and Asia and help spur robust economic growth throughout the world. Growth at home depends upon growth abroad. Many of you came with me when I traveled to Latin America earlier this year. We saw many things on that trip -- vibrant people, ancient customs, and a spirit of entrepreneurship that is making Latin America one of the world's fastest growing economies. That is why I have urged the major industrial economies to stand ready to use the \$15 billion in emergency IMF funds to help stop the financial contagion from spreading to Latin America and elsewhere. And we must help the IMF put out the world's economic fires by paying our fair share.

Finally, we cannot rest until we solve the oldest, most stubborn, most painful challenge of our nation -- the lingering problems and limitless possibilities of our growing diversity. Last week, for the final time, I met with my Advisory Board on Race and received their report. I am proud of their work, the guidance they have given us for policy, for dialogue, for specific practices in every community in this country. But we know we have only just begun a work that will take a lifetime; only just begun to find ways finally to lift the burden of racial and ethnic discrimination, and redeem the full promise of America.

More than any other nation on earth, America has drawn our strength from our diversity, as wave after wave of immigrants have come to our shores in search of a better life for their families. Today, we are the most ethnically and racially diverse democracy in the history of the world. With nearly one million people coming legally to America every year from countries all over the world, we must ask ourselves: will these changes strengthen and unite us, or weaken and divide us?

I believe that immigration is not only good for America -- it is America. It is our history -- it is our heritage -- and it is our hope for the future. As ethnic conflicts tear countries and families apart around the world, we can prove that a diverse people can live together in peace, learning from each another, drawing on each other's strengths, building on one another's accomplishments.

We must welcome new immigrants, and do everything we can to encourage them to learn our language, embrace our way of life, and become full participants in our society by becoming citizens. That is why I have called on the INS to streamline and improve the naturalization process. My balanced budget would help reduce the backlog of applications and improve customer service. When people take responsibility to become citizens, we should do everything we can to help them -- whether they work in a Fortune 500 company, in a department store, or in the fields, as so many have before them. They deserve a chance -- and we must give it to them.

America has always stood proud as a nation dedicated to widening the circle of opportunity, to deepening the meaning of our freedom, and to forming that more perfect union. One of the most passionate advocates for those ideals our country has ever known -- indeed, one of our greatest American heroes -- was Cesar Chavez. Thirty years ago, he met a kindred spirit in Robert Kennedy, who had traveled to California where Chavez lay, fasting in penance for the violence caused by the struggle for farm workers rights. That night, Bobby Kennedy and Cesar Chavez broke bread together in a Thanksgiving Mass. Someone had to read these words Chavez was too weak to speak, words I would like to share with you tonight. "Our lives are all that really belong to us, so it is how we use our lives that determines what kind of people we are." That night, Robert

Kennedy made up his mind to run for President.

□,

My friends, you and I are bound together by our commitment to use our lives to make this country a better place for all our people, to build a better world for our children. This is not a time to rest. It is time to work. I am honored to share this precious moment in time with all of you, and to work together to build that better world.

Thank you and God bless you all.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Ingrid M. Schroeder ( CN=Ingrid M. Schroeder/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:23-SEP-1998 09:43:25.00

SUBJECT: LRM #IMS428 - Statement of Administration Policy on S2392 Year 2000 Inform

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READ:UNKNOWN

TO: David Y. Stevens ( CN=David Y. Stevens/OU=OSTP/O=EOP [ OSTP ] )

READ:UNKNOWN

TO: congress.affairs ( congress.affairs @ arch2.nara.gov @ inet [ UNKNOWN ] )

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TO: cftclrm ( cftclrm @ cftc.gov @ inet [ UNKNOWN ] )

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TO: toby.costanzo ( toby.costanzo @ hq.nasa.gov @ inet [ UNKNOWN ] )

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TO: ferc\_lrm ( ferc\_lrm @ ferc.fed.us @ inet [ UNKNOWN ] )

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TO: rademachpr ( rademachpr @ ssonwpob.us-state.gov @ inet [ UNKNOWN ] )

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TO: justice.lrm ( justice.lrm @ usdoj.gov @ inet [ UNKNOWN ] ) (OA)

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TO: HUD-LRM ( HUD-LRM @ hud.gov @ inet [ UNKNOWN ] )

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TO: ca.legislation ( ca.legislation @ gsa.gov @ inet [ UNKNOWN ] )

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TO: lrm ( lrm @ os.dhhs.gov @ inet [ UNKNOWN ] )  
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TO: energy.gc71 ( energy.gc71 @ hq.doe.gov @ inet [ UNKNOWN ] )  
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TO: dodlrs ( dodlrs @ osdgc.osd.mil @ inet [ UNKNOWN ] )  
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TO: clrm ( clrm @ doc.gov @ inet [ UNKNOWN ] )  
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TO: Michelle Peterson ( CN=Michelle Peterson/OU=WHO/O=EOP@EOP [ WHO ] )  
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TO: Paul J. Weinstein Jr. ( CN=Paul J. Weinstein Jr./OU=OPD/O=EOP@EOP [ OPD ] )  
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TO: Robert N. Weiner ( CN=Robert N. Weiner/OU=WHO/O=EOP@EOP [ WHO ] )  
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CC: Jeffrey A. Weinberg ( CN=Jeffrey A. Weinberg/OU=OMB/O=EOP@EOP [ OMB ] )  
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CC: Kate P. Donovan ( CN=Kate P. Donovan/OU=OMB/O=EOP@EOP [ OMB ] )  
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CC: James J. Jukes ( CN=James J. Jukes/OU=OMB/O=EOP@EOP [ OMB ] )  
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TEXT:  
Total Pages: \_\_\_\_

LRM ID: IMS428  
EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
Washington, D.C. 20503-0001

Tuesday, September 22, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Jeffrey A. Weinberg (for) Assistant Director for Legislative  
Reference

OMB CONTACT: Ingrid M. Schroeder

PHONE: (202)395-3883 FAX: (202)395-3109

SUBJECT: Statement of Administration Policy on S2392 Year 2000  
Information Disclosure Act

DEADLINE: COB Thursday, September 24, 1998

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect



direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: S. 2392 is based on the Administration's bill transmitted to Congress on 7/27/98.

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68-National Archives and Records Administration - John A. Constance - (301) 713-7340  
128-US Trade Representative - Fred Montgomery - (202) 395-3475

EOP:

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Elena Kagan  
Paul J. Weinstein Jr.  
Jim Kohlenberger  
Lisa M. Brown  
Lisa M. Kountoupes  
Sarah Rosen  
Janet B. Abrams  
Phyllis Kaiser-Dark  
John A. Koskinen  
Donald R. Arbuckle  
Bruce W. McConnell  
Jefferson B. Hill

LRM ID: IMS428 SUBJECT: Statement of Administration Policy on S2392  
Year 2000 Information Disclosure Act

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

Please include the LRM number shown above, and the subject shown below.

FROM: \_\_\_\_\_ (Date)  
 \_\_\_\_\_ (Name)  
 \_\_\_\_\_ (Agency)  
 \_\_\_\_\_ (Telephone)

\_\_\_\_\_ Concur  
\_\_\_\_\_ No Objection

\_\_\_\_\_ No Comment

\_\_\_\_\_ See proposed edits on pages \_\_\_\_\_

\_\_\_\_\_ Other: \_\_\_\_\_

\_\_\_\_\_ FAX RETURN of \_\_\_\_\_ pages, attached to this response sheet

DRAFT -- NOT FOR RELEASE

September 22, 1998

(Senate)

S. 2392 - Year 2000 Information Disclosure Act  
(Bennett (R) Utah and 4 cosponsors)

The Administration strongly supports Senate passage of S. 2392 which would encourage organizations to share year 2000 (Y2K) information by limiting liability for good faith information disclosures. The bill is based on an Administration proposal.

As the President stated on September 18, 1998, enactment of this important legislation will help businesses and government agencies work through the Y2K problem. The legislation must be enacted this year to be effective in helping our Nation prepare its computer systems for the new millenium.

\* \* \* \* \*

Calendar No. 584

105th CONGRESS

2d Session

S. 2392

A BILL

To encourage the disclosure and exchange of information about computer processing problems and related matters in connection with the transition to the year 2000.

September 17, 1998

Reported with an amendment and an amendment to the title

S 2392 RS

Calendar No. 584

105th CONGRESS

2d Session

S. 2392

To encourage the disclosure and exchange of information about computer processing problems and

related matters in connection with the transition to the year 2000.

IN THE SENATE OF THE UNITED STATES

July 30, 1998

Mr. BENNETT (by request) (for himself, Mr. DODD, Mr. MOYNIHAN, Mr. KOHL, and Mr. ROBB) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

September 17, 1998

Reported by Mr. HATCH, with an amendment and an amendment to the title

A BILL

To encourage the disclosure and exchange of information about computer processing problems and related matters in connection with the transition to the year 2000.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Year 2000 Information and Readiness Disclosure Act'.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS- Congress finds the following:

(1) (A) At least thousands but possibly millions of information technology computer systems, software programs, and semiconductors are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process those dates.

(B) The problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, government, and safety and defense systems, in the United States and throughout the world.

(C) Reprogramming or replacing affected systems before the problem incapacitates essential systems is a matter of national and global interest.

(2) The prompt, candid, and thorough disclosure and exchange of

information  
related to year 2000 readiness of entities, products, and  
services--

(A) would greatly enhance the ability of public and private  
entities to  
improve their year 2000 readiness; and

(B) is therefore a matter of national importance and a  
vital factor in  
minimizing any potential year 2000 related disruption to  
the Nation's  
economic well-being and security.

(3) Concern about the potential for legal liability associated  
with the disclosure  
and exchange of year 2000 readiness information is impeding the  
disclosure and  
exchange of such information.

(4) The capability to freely disseminate and exchange  
information relating to year  
2000 readiness, solutions, test practices and test results, with  
the public and other  
entities without undue concern about litigation is critical to  
the ability of public  
and private entities to address year 2000 needs in a timely  
manner.

(5) The national interest will be served by uniform legal  
standards in connection  
with the disclosure and exchange of year 2000 readiness  
information that will  
promote disclosures and exchanges of such information in a  
timely fashion.

(b) PURPOSES- Based upon the powers contained in article I, section  
8, clause 3 of the  
Constitution of the United States, the purposes of this Act are--

(1) to promote the free disclosure and exchange of information  
related to year  
2000 readiness;

(2) to assist consumers, small businesses, and local governments  
in effectively and  
rapidly responding to year 2000 problems; and

(3) to lessen burdens on interstate commerce by establishing  
certain uniform legal  
principles in connection with the disclosure and exchange of  
information related  
to year 2000 readiness.

### SEC. 3. DEFINITIONS.

In this Act:

(1) ANTITRUST LAWS- The term 'antitrust laws'--

(A) has the meaning given to it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such

section 5 applies to unfair methods of competition; and

(B) includes any State law similar to the laws referred to in subparagraph

(A).

(2) CONSUMER- The term 'consumer' means an individual who acquires a consumer product other than for purposes of resale.

(3) CONSUMER PRODUCT- The term 'consumer product' means any personal property or service which is normally used for personal, family, or household purposes.

(4) COVERED ACTION- The term 'covered action' means any civil action of any kind, whether arising under Federal or State law, except for any civil action arising under Federal or State law brought by a Federal, State, or other public entity, agency, or authority acting in a regulatory, supervisory, or enforcement capacity.

(5) MAKER- The term 'maker' means each person or entity, including a State or political subdivision thereof, that issues or publishes any year 2000 statement, or develops or prepares, or assists in, contributes to, or reviews, reports or comments on during, or approves, or otherwise takes part in the preparing, developing, issuing, approving, or publishing any year 2000 statement.

(6) REPUBLICATION- The term 'republishing' means any repetition, in whole or in part, of a year 2000 statement originally made by another.

(7) YEAR 2000 INTERNET WEBSITE- The term 'year 2000 Internet website' means an Internet website or other similar electronically accessible service, clearly designated on the website or service by the person or entity creating or controlling the content of the website or service as an area where year 2000 statements concerning that person or entity are posted or otherwise made accessible to the general public.

(8) YEAR 2000 PROCESSING- The term 'year 2000 processing' means

the processing (including calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving of data from, into, and between the 20th and 21st centuries, and during the years 1999 and 2000, and leap year calculations.

(9) YEAR 2000 READINESS DISCLOSURE- The term 'year 2000 readiness disclosure' means any written year 2000 statement, clearly identified on its face as a year 2000 readiness disclosure inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form and issued or published by or with the approval of an entity with respect to year 2000 processing of that entity or of products or services offered by that entity.

(10) YEAR 2000 STATEMENT-

(A) IN GENERAL- The term 'year 2000 statement' means any communication or other conveyance of information by a party to another or to the public, in any form or medium--

(i) concerning an assessment, projection, or estimate concerning year 2000 processing capabilities of any entity, product, or service, or a set of products and services;

(ii) concerning plans, objectives, or timetables for implementing or verifying the year 2000 processing capabilities of an entity, a product, or service, or a set of products or services;

(iii) concerning test plans, test dates, test results, or operational problems or solutions related to year 2000 processing by--

(I) products; or

(II) services that incorporate or utilize products; or

(iv) reviewing, commenting on, or otherwise directly or indirectly relating to year 2000 processing capabilities.

(B) NOT INCLUDED- The term does not include for the purposes of any action brought under the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), any document or material filed with the Securities and Exchange

Commission,  
or with Federal banking regulators, pursuant to section  
12(i) of the  
Securities Exchange Act of 1934 (15 U.S.C. 781(i)), or any d  
isclosure or  
writing that when made accompanied the solicitation of an  
offer or sale of  
securities.

#### SEC. 4. PROTECTION FOR YEAR 2000 STATEMENTS.

(a) EVIDENCE EXCLUSION- No year 2000 readiness disclosure, in whole  
or in part,  
shall be admissible against the maker of the disclosure to prove the  
accuracy or truth of  
any year 2000 statement set forth in that disclosure, in any covered  
action brought by  
another party except that--

(1) a disclosure may serve as the basis for a claim for  
anticipatory breach or  
repudiation or a similar claim against the maker, to the extent  
provided by  
applicable law; and

(2) the court in any covered action shall have discretion to  
limit application of  
this subsection in any case in which the court determines that  
the maker's use of  
that disclosure amounts to bad faith, or fraud, or is otherwise  
is beyond what is  
reasonable to achieve the purposes of this Act.

(b) FALSE, MISLEADING AND INACCURATE YEAR 2000 STATEMENTS- Except as  
otherwise provided in subsection (c), in any covered action, to the  
extent that such  
action is based on an allegedly false, inaccurate, or misleading year  
2000 statement, the  
maker of that year 2000 statement shall not be liable under Federal  
or State law with  
respect to that year 2000 statement unless the claimant establishes,  
in addition to all  
other requisite elements of the applicable action, by clear and  
convincing evidence,  
that--

(1) the year 2000 statement was material; and

(2) (A) to the extent the year 2000 statement was not a  
republication of a year  
2000 statement originally made by a third party, that the maker  
made the year  
2000 statement--

(i) with actual knowledge that the year 2000 statement was  
false,  
inaccurate, or misleading;

(ii) with intent to deceive or mislead; or



(iii) with a reckless disregard as to the accuracy of the year 2000 statement; or

(B) to the extent the year 2000 statement was a republication of a year 2000 statement originally made by a third party, that the maker of the republication made the year 2000 statement--

(i) with actual knowledge that the year 2000 statement was false, inaccurate, or misleading;

(ii) with intent to deceive or mislead; or

(iii) without notice in that year 2000 statement that--

(I) the maker has not verified the contents of the republication; or

(II) the maker is not the source of the republished year 2000 statement, the republished statement is based on information supplied by another person or entity, and the notice or republished statement identifies the source of the republished statement.

(c) DEFAMATION OR SIMILAR CLAIMS- In a covered action arising under any Federal or State law of defamation, trade disparagement, or a similar claim, to the extent such action is based on an allegedly false, inaccurate, or misleading year 2000 statement, the maker of that year 2000 statement shall not be liable with respect to that year 2000 statement, unless the claimant establishes by clear and convincing evidence, in addition to all other requisite elements of the applicable action, that the year 2000 statement was made with knowledge that the year 2000 statement was false or made with reckless disregard as to its truth or falsity.

(d) YEAR 2000 INTERNET WEBSITE-

(1) IN GENERAL- Except as provided in paragraph (2), in any covered action, other than a covered action involving personal injury or serious physical damage to property, in which the adequacy of notice about year 2000 processing is at issue, the posting, in a commercially reasonable manner and for a commercially reasonable duration, of a notice by the entity charged with giving such notice on the year 2000 Internet website of that entity shall be deemed to be an adequate

mechanism for providing that notice.

(2) EXCEPTION- Under paragraph (1) the notice shall not be adequate if the trier of fact finds that the use of the mechanism of notice--

(A) is contrary to express prior representations made by the party giving notice;

(B) is materially inconsistent with the regular course of dealing between the parties; or

(C) occurs where there have been no prior representations regarding the mechanism of notice and no regular course of dealing exists between the parties and where actual notice is clearly the most commercially reasonable means of providing notice.

(3) CONSTRUCTION- Nothing in this subsection shall--

(A) alter or amend any Federal or State statute or regulation requiring that notice about year 2000 processing be provided using a different mechanism;

(B) create a duty to provide notice about year 2000 processing;

(C) preclude or suggest the use of any other medium for notice about year 2000 processing or require the use of an Internet website; or

(D) mandate the content or timing of any notices about year 2000 processing.

(e) LIMITATION ON EFFECT OF YEAR 2000 STATEMENTS-

(1) IN GENERAL- In any covered action, a year 2000 statement shall not be interpreted or construed as an amendment to or alteration of a contract or warranty, whether entered into by or approved for a public or private entity.

(2) NOT APPLICABLE-

(A) IN GENERAL- This subsection shall not apply--

(i) to the extent the party whose year 2000 statement is alleged to have amended or altered a contract or warranty has agreed in writing to so alter or amend the contract or

warranty;

the formation (ii) to a year 2000 statement made in conjunction with  
of the contract or warranty; or

provides for its (iii) if the contract or warranty specifically  
amendment or alteration through the making of a year  
2000 statement.

intended to (B) RULE OF CONSTRUCTION- Nothing in this subsection is  
affect applicable Federal or State law in effect as of the  
date of enactment of this Act with respect to determining the extent to which  
a year 2000 statement within the scope of clause (i), (ii), or (iii) of  
subparagraph (A) affects a contract or warranty.

(f) SPECIAL DATA GATHERING-

(1) IN GENERAL- A Federal entity, agency, or authority may  
expressly designate a request for the voluntary provision of information relating to  
year 2000 processing, including year 2000 statements, as a special year  
2000 data gathering request made pursuant to this subsection.

(2) SPECIFICS- A special year 2000 data gathering request made  
under this subsection shall specify a Federal entity, agency, or authority,  
or with the consent of the designee, another public or private entity, agency or  
authority, to gather responses to the request.

(3) PROTECTIONS- Except with the express consent or permission  
of the provider of information described in paragraph (1), any year  
2000 statements or other such other information provided by a party in response to  
a special year 2000 data gathering request made under this subsection--

(A) shall be exempt from disclosure under subsection (b)(4)  
of section 552 of title 5, United States Code, commonly known as the  
'Freedom of Information Act' ;

(B) shall be prohibited from disclosure to any third party;  
and

(C) may not be used by any Federal entity, agency, or  
authority or by any third party, directly or indirectly, in any civil action

arising under any  
Federal or State law.

(4) EXCEPTIONS-

(A) INFORMATION OBTAINED ELSEWHERE- Nothing in this subsection shall preclude a Federal entity, agency, or authority or any third party from separately obtaining the information submitted in response to a request under this subsection through the use of independent legal authorities, and using such separately obtained information in any action.

(B) VOLUNTARY DISCLOSURE- A restriction on use or disclosure of information under this subsection shall not apply to any information disclosed to the public with the express consent of the party responding to the request or disclosed by such party separately from a response to a special year 2000 data gathering request.

SEC. 5. TEMPORARY ANTITRUST EXEMPTION.

(a) EXEMPTION- Except as provided in subsection (b), the antitrust laws shall not apply to conduct engaged in, including making and implementing an agreement, solely for the purpose of--

(1) facilitating responses intended to correct or avoid a failure of year 2000 processing in a computer system, in a component of a computer system, in a computer program or software, or services utilizing any such system, component, program, or hardware; or

(2) communicating or disclosing information to help correct or avoid the effects of year 2000 processing failure.

(b) APPLICABILITY- Subsection (a) shall apply only to conduct that occurs, or an agreement that is made and implemented, after the date of enactment of this Act and before July 14, 2001.

(c) EXCEPTION TO EXEMPTION- Subsection (a) shall not apply with respect to conduct that involves or results in an agreement to boycott any person, to allocate a market or fix prices or output.

(d) RULE OF CONSTRUCTION- The exemption granted by this section shall be construed narrowly.

SEC. 6. EXCLUSIONS.

(a) EFFECT ON INFORMATION DISCLOSURE- This Act does not affect, abrogate, amend, or alter the authority of a Federal or State entity, agency, or authority to enforce a requirement to provide or disclose, or not to provide or disclose, information under a Federal or State statute or regulation or to enforce such statute or regulation.

(b) CONTRACTS AND OTHER CLAIMS-

(1) IN GENERAL- Except as may be otherwise provided in subsections (a) and (e) of section 4, this Act does not affect, abrogate, amend, or alter any right established by contract or tariff between any person or entity, whether entered into by a public or private person entity, under any Federal or State law.

(2) OTHER CLAIMS- In any covered action brought by a consumer, this Act does not apply to a year 2000 statement expressly made in a solicitation, including an advertisement or offer to sell, to that consumer by a seller, manufacturer, or provider of a consumer product.

(3) RULE OF CONSTRUCTION- Nothing in this Act shall be construed to preclude any claims that are not based exclusively on year 2000 statements.

(c) DUTY OR STANDARD OF CARE-

(1) IN GENERAL- This Act shall not impose upon the maker of any year 2000 statement any more stringent obligation, duty, or standard of care than is otherwise applicable under any other Federal law or State law.

(2) ADDITIONAL DISCLOSURE- This Act does not preclude any party from making or providing any additional disclosure, disclaimer, or similar provisions in connection with any year 2000 readiness disclosure or year 2000 statement.

(3) DUTY OF CARE- This Act shall not be deemed to alter any standard or duty of care owed by a fiduciary, as defined or determined by applicable Federal or State law.

(d) INTELLECTUAL PROPERTY RIGHTS- This Act does not affect, abrogate, amend, or alter any right in a patent, copyright, semiconductor mask work,

trade secret, trade  
name, trademark, or service mark, under any Federal or State law.

(e) INJUNCTIVE RELIEF- Nothing in this Act shall be deemed to  
preclude a claimant  
from seeking temporary or permanent injunctive relief with respect to  
a year 2000  
statement.

#### SEC. 7. APPLICABILITY.

##### (a) EFFECTIVE DATE-

(1) IN GENERAL- Except as otherwise provided in this section,  
this Act shall  
become effective on the date of enactment of this Act.

(2) APPLICATION TO LAWSUITS PENDING- This Act shall not affect  
or apply  
to any lawsuit pending on July 14, 1998.

(3) APPLICATION TO STATEMENTS AND DISCLOSURES- Except as provided  
in subsection (b)--

(A) this Act shall apply to any year 2000 statement made on  
or after July  
14, 1998 through July 14, 2001; and

(B) this Act shall apply to any year 2000 readiness  
disclosure made after the  
date of enactment of this Act through July 14, 2001.

##### (b) PREVIOUSLY MADE READINESS DISCLOSURE-

(1) IN GENERAL- For the purposes of section 4(a), a person or  
entity that issued  
or published a year 2000 statement after January 1, 1996, and  
before the date of  
enactment of this Act, may designate that year 2000 statement as  
a year 2000  
readiness disclosure if--

(A) the year 2000 statement complied with the requirements  
of section 4(b)  
when made, other than being clearly designated on its face  
as a disclosure;

(B) within 45 days after the date of enactment of this Act,  
the person or  
entity seeking the designation provides notice--

(i) by individual notice that meets the requirements  
of paragraph (2)  
to all recipients of the applicable year 2000  
statement; and

(ii) a prominent posting notice that meets the  
requirements of  
paragraph (2) on its year 2000 Internet website,  
commencing prior to

the end of the 45-day period under this subparagraph  
and extending  
for a minimum of 45 consecutive days and also by using  
the same  
method of notification used to originally provide the  
applicable year  
2000 statement.

(2) REQUIREMENTS- A notice under paragraph (1)(B) shall--

(A) state that the year 2000 statement that is the subject  
of the notice is  
being designated a year 2000 readiness disclosure; and

(B) include a copy of the year 2000 statement with a legend  
labeling the  
statement as a 'Year 2000 Readiness Disclosure'.

(c) EXCEPTION- No designation of a year 2000 statement as a  
disclosure under  
subsection (b) shall apply with respect to any person or entity that--

(1) proves, by clear and convincing evidence, that it relied on  
the year 2000  
statement prior to the receipt of notice described above and it  
would be  
prejudiced by the retroactive designation of the year 2000  
statement as a  
disclosure; and

(2) provides to the person or entity seeking the designation a  
written notice  
objecting to the designation within 45 days after receipt of  
individual notice  
under subsection (b)(2)(B)(i), or within 180 days after the date  
of enactment of  
this Act, in the case of notice provided under subsection  
(b)(2)(B)(ii).

#### SEC. 8. NATIONAL INFORMATION CLEARINGHOUSE AND WEBSITE.

(a) NATIONAL WEBSITE-

(1) IN GENERAL- The Administrator of General Services shall  
create and  
maintain a national year 2000 website, and promote its  
availability, designed to  
assist consumers, small business, and local governments in  
obtaining information  
from other governmental websites, hotlines, or information  
clearinghouses about  
year 2000 Processing of computers, systems, products and  
services, including  
websites maintained by independent agencies and other departme  
nts.

(2) CONSULTATION- In creating the national year 2000 website, the  
Administrator of General Services shall consult with--

(A) the Director of the Office of Management and Budget;

(B) the Administrator of the Small Business Administration;  
 (C) the Consumer Product Safety Commission;  
 (D) officials of State and local governments;  
 (E) the Director of the National Institute of Standards and Technology;  
 (F) representatives of consumer and industry groups; and  
 (G) representatives of other entities, as determined appropriate.

(b) REPORT- The Administrator of General Services shall submit a preliminary report to the Committees on the Judiciary of the Senate and the House of Representatives and the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives not later than 60 days after the date of enactment of this Act regarding planning to comply with the requirements of this section.

Amend the title so as to read: 'To encourage the disclosure and exchange of information about computer processing problems, solutions, test practices and test results, and related matters in connection with the transition to the year 2000.'.

END



RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Julie A. Fernandes ( CN=Julie A. Fernandes/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME: 23-SEP-1998 09:46:22.00

SUBJECT: H-1B -- deal afoot?

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ: UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )

READ: UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ: UNKNOWN

CC: Cathy R. Mays ( CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [ OPD ] )

READ: UNKNOWN

TEXT:

I just heard from DOL that Gene is meeting with Abraham today at 12 noon, with the expectation that we will have a deal by 2pm. I will keep you posted.

julie

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Michael Cohen ( CN=Michael Cohen/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:23-SEP-1998 10:10:50.00

SUBJECT: single sex schools update

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TEXT:

Here's what Scott Fleming learned since our meeting yesterday:

1. Kennedy's goal is to draft an amendment that he can use to "get back" the women Dem's who voted with Hutchinson the last time, and then go with them to Hutchinson to work out a deal (Scott and I think this is a very unlikely scenario). While Kennedy's education staff (Donica Petrovich) says that Kennedy feels strongly about this, it appears that he is mainly being moved by the women's groups. Donica admitted that she is having a hard time getting the women Dem's very interested in this issue.
2. Patty Murray's staff (Murray voted and worked against Hutchinson the last time) also reports that there is little interest among women Dem's on this amendment. And while he confirmed Murray's opposition, she doesn't feel that strongly about this either.
3. In short, as we suspected yesterday, the women's groups are the big issue here. In all likelihood, if they weren't pushing this one, there would not be much opposition among Dems. So, a meeting with them still seems like a necessary step. Any word from Podesta on this issue?
4. In addition, I continue to think it might be helpful if Kennedy, the female Dems and Dems on the Ed and Labor committee had good information on the NYC school. This won't directly help with the women's groups, but may give the Dems some addition comfort if they decide to part ways with them on this issue.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Dawn L. Smalls ( CN=Dawn L. Smalls/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME:23-SEP-1998 13:50:18.00

SUBJECT: either Bruce/Elena pls come to Podesta's ofc - pre-REes. mtg now

TO: ELENA (Pager) #KAGAN ( ELENA (Pager) #KAGAN [ UNKNOWN ] )  
READ:UNKNOWN

TO: BRUCE N. (Pager) #REED ( BRUCE N. (Pager) #REED [ UNKNOWN ] )  
READ:UNKNOWN

TEXT:

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:23-SEP-1998 13:57:23.00

SUBJECT: Elena left me voice mail asking if I'd added DPC to the bankruptcy memo

TO: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TEXT:

Yes I had. Here's the latest as of last night showing DPC agreeing with First Lady's office, etc.

----- Forwarded by Cynthia A. Rice/OPD/EOP on 09/23/98  
01:56 PM -----

Sarah Rosen

09/22/98 07:04:48 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: REVISED (AGAIN) BANKRUPTCY MEMO

This time we tried to eliminate discussion of that about which we agree and crystalize the disagreement between the parties. I think this is clearer and crisper. Thanks to Rob and Joe, I eliminated many extra words and now hang over the 3 page limit I got from Staff Secretary by only a paragraph. Any help to eliminate a few more lines would be appreciated.

Treasury -- Note that on your last paragraph, re how shifting to chapter 13 helps child support and alimony payment, HHS asked us to qualify that to be clear that it only helps IF we move the right people. IF they fail in chapter 13, then go back to 7, there are fewer assets and more, not less, to pay the kids.

This draft is going to Gene tonight. Final comments due at 10:00 tomorrow morning. We expect the final vote on passage tomorrow afternoon.

Message Sent

To:

Sally Katzen/OPD/EOP

Shannon Mason/OPD/EOP

Melissa G. Green/OPD/EOP

Roger S. Ballentine/WHO/EOP

fran.m.allegre @ usdoj.gov @ inet

mark.mcclellan @ treas.sprint.com @ inet

Sarah Rosen/OPD/EOP

David W. Beier/OVP @ OVP

Douglas W. Elmendorf/CEA/EOP  
Nicole R. Rabner/WHO/EOP  
Cynthia A. Rice/OPD/EOP  
Theodore Wartell/OMB/EOP  
Alan B. Rhinesmith/OMB/EOP  
Joseph J. Minarik/OMB/EOP  
Alice Veenstra/OMB/EOP  
Robert N. Weiner/WHO/EOP  
Maria Echaveste/WHO/EOP  
Marjorie Tarmey/WHO/EOP  
Maureen T. Shea/WHO/EOP  
Rebecca M. Blank/CEA/EOP  
Sarah Rosen/OPD/EOP  
jean\_veta @ ed.gov @ inet  
jean.veta @ ed.gov @ inet

===== ATTACHMENT 1 =====  
ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS\_EXT:[ATTACH.D85]MAIL469737560.226 to ASCII,  
The following is a HEX DUMP:

FF575043A70A0000010A02010000000205000000FA3800000002000017C4E63F3A67CBB3223D73  
EFFF213FEF54A986845D7A2DFF42733294E6F55C97B5292694D7D3D6391C956AD5202467C143E5  
72150ED1CA318EB09E8891D55D490A4E46668DD8ED6D58587FCCEA411B6F81CA1A2BFCDAD9DF92

September 22, 1998 -- DRAFT

**MEMORANDUM FOR THE PRESIDENT**

**FROM: GENE SPERLING**

**RE: BANKRUPTCY REFORM LEGISLATION**

This memorandum seeks your guidance on whether we should take a very firm stance regarding the upcoming bankruptcy conference, threatening a veto if many of our conditions are not met, or whether we should be more willing to accept a bill meeting some of our goals and offering no harm to child support and alimony but without key aspects of the administration proposal.

**Background**

In June, you approved an Administration bankruptcy reform proposal. Today, the Senate passed, \_\_\_ - \_\_\_, a bankruptcy bill that reflects almost all the major elements of our proposal. While further improvements could be made, the Senate bill reflects a significant step toward balanced bankruptcy reform, dealing with abuses by both debtors and creditors.

The House bill has some desirable features too, but overall is far more problematic. That bill, which passed by a veto-proof majority over the Administration's strong opposition, uses a rigid formula to exclude certain debtors from Chapter 7's full discharge of unsecured debt, creates new nondischargeable debts that will compete with child support and alimony post-bankruptcy, and addresses perceived abuses by debtors but not by creditors.

**Administration Proposal**

The key aspects of our proposal, incorporated into the Senate bill, are:

- (1) ***A Discretionary and More Targeted "Means Test"*** -- a discretionary approach to, and higher thresholds for, shifting borrowers from Chapter 7 to Chapter 13, instead of the House's rigid, arbitrary approach to determining whether a debtor can use Chapter 7;
- (2) ***Elimination of New, Nondischargeable Debts*** -- eliminate new provisions that could pit, post-bankruptcy, credit card debt against child support, alimony, educational loans, and taxes, except for debt incurred with an intent to defraud;
- (3) ***Balanced Reforms Affecting Creditors, as well as Debtors*** -- include balanced provisions that ask both debtors and creditors to behave more responsibly, including:
  - (a) adequate protection against coercive reaffirmations; and

- (b) disclosure requirements to ensure that consumers get the information that they need to manage their budgets.

### **Prospects for Conference**

Work on compromising the two bills will begin immediately. The most likely outcome is a bill between the House and Senate approaches, with key Administration provisions watered down or omitted. Senator Grassley will fight hard to preserve the Senate approach, but Chairman Hatch expects the Senate approach to be compromised in conference. House Republicans have said that they will not compromise on key issues with the Senate.

On the other hand, the legislative calendar works in our favor. A more extreme approach in conference risks trouble on the Senate floor and a direct or pocket veto from you. Some Democratic Senators supported the Senate bill because of its balance and moderation. In the face of your strong opposition, the Senate [could, but is not certain to,] override your veto of a House-like final bill. [NEED TO SEE FINAL VOTE ON PASSAGE BEFORE DECIDE ON VIEW HERE.]

At best, conference will produce the minimum the Republicans think they need to give in order to get your signature. At worst, the conference will stick largely with the House approach, as Republicans may not believe you would veto a bill with such strong bipartisan support or may believe a veto could be overridden. Legislative Affairs recommends a clear message about what you would sign and what you would veto, if we hope to have any influence over the conference.

Staff have agreed on a letter to conferees laying out our position, but the language disguises a core disagreement on the bottom line. A clearer message could be sent with your guidance.

### **OPTION 1: INSIST ON INCLUSION OF THE ADMINISTRATION'S MODERATING AND BALANCED PROPOSALS, AS IN THE SENATE BILL.**

**Proponents:** NEC, OLA, CoS (Echaveste), OVP, OMB, WH Counsel, DPC, OFL, OPL (Women's Office), Commerce, OTS, USDA and DoJ.<sup>1</sup>

The majority of your advisors will recommend that you veto a bill that deviates substantially from the Senate bill -- i.e., that: (1) retains the arbitrary House "means test" instead of the more flexible Senate approach; (2) creates categories of nondischargeable debt that compete with child support, alimony, educational loans, or taxes; or (3) fails to include some balance in the form of enhanced disclosures and consumer protections.

---

<sup>1</sup> Education prefers this approach, but would not recommend a veto unless an issue within their jurisdiction is implicated -- specifically, unless new nondischargeable debts are created that compete with educational loans.

These advisors feel strongly that we should not sanction a rigid “means test” that does not adequately consider the unique circumstances of individual debtors. Any test that excludes from Chapter 7 those able to repay significantly changes our bankruptcy system. We should be cautious in that change, lest we deny access to bankruptcy to those who need it most. We have offered an alternative between the House and Senate view that we could accept.

We all know that you will not accept any provisions that create new nondischargeable debts to compete with child support and alimony. But these advisors feel that, even if child support and alimony are untouched, no sufficient case has been made that certain credit card debt should be given the same protection that we give to educational loans or taxes, for example.

Finally, these advisors believe you must insist on balance -- curbing abuse by creditors as well as debtors. We are seeing more competition and dramatic changes in how creditors grant credit. While beneficial for some, these changes increase the number of consumers who can get in over their heads and dictate that we improve disclosures and enhance protections against coercion, especially if we are going to foreclose access to a “fresh start” for some who make a mistake.

**OPTION 2: ACCEPT, IF NECESSARY, LESS IDEAL COMPROMISE AS AN IMPROVEMENT OVER THE STATUS QUO.**

**Proponents:** Treasury and CEA.

Treasury and CEA believe that bankruptcy reform short of some Administration goals -- the likely outcome -- would still markedly improve the current system. While they would not support signing the House bill in current form, they do believe you should sign a bill with any reasonable compromise between the House and Senate approaches, if it meets our goals for the protection of child support and alimony payments.

Treasury and CEA emphasize that the House means-test formula would affect only 10% of filers, all with above-median income. Currently, these debtors escape their obligations, even though many likely can repay at least part of what they owe. Reducing their debt charge-offs would lower the cost of credit for all consumers -- a particular benefit for lower- and middle-income Americans who depend on consumer credit for significant household purchases.

Finally, Treasury and CEA argue that any compromise bill will likely improve payment of child support and alimony (provided that it creates no new post-bankruptcy obligations competing with these payments). Under the bill, more debtors will enter Chapter 13 court-supervised repayment plans, where child support and alimony receive first priority, and court supervision and other authorities make payment of these obligations more likely, provided that the means test used shifts the right people to Chapter 13.



**Decision**

While we seek no final judgement now regarding the bill to be produced by the conference, your response to this memorandum will allow staff to negotiate with a clear sense of your objectives.

**OPTION 1 -- INSIST ON INCLUSION OF SENATE BILL PROVISIONS \_\_\_\_\_**

**OPTION 2 -- ACCEPT, IF NECESSARY, LESS IDEAL COMPROMISE \_\_\_\_\_**

**LET'S DISCUSS \_\_\_\_\_**

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Stephen G. Elmore ( CN=Stephen G. Elmore/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:23-SEP-1998 14:48:21.00

SUBJECT: SAP on Vacancies Reform Act--Comment by 4:30PM TODAY

TO: James J. Jukes ( CN=James J. Jukes/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TO: Julie A. Fernandes ( CN=Julie A. Fernandes/OU=OPD/O=EOP@EOP [ OPD ] )

READ:UNKNOWN

TO: G. Timothy Saunders ( CN=G. Timothy Saunders/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: Tracey E. Thornton ( CN=Tracey E. Thornton/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: Dorian V. Weaver ( CN=Dorian V. Weaver/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: John Podesta ( CN=John Podesta/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: Steven D. Aitken ( CN=Steven D. Aitken/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TO: Raymond P. Kogut ( CN=Raymond P. Kogut/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TO: Bruce D. Long ( CN=Bruce D. Long/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TO: Janet R. Forsgren ( CN=Janet R. Forsgren/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP@EOP [ OPD ] )

READ:UNKNOWN

TO: Michelle Peterson ( CN=Michelle Peterson/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: Roger S. Ballentine ( CN=Roger S. Ballentine/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: Robert N. Weiner ( CN=Robert N. Weiner/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: Bob J. Nash ( CN=Bob J. Nash/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: Kate P. Donovan ( CN=Kate P. Donovan/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TO: Robert G. Damus ( CN=Robert G. Damus/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TO: Lisa B. Fairhall ( CN=Lisa B. Fairhall/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TO: G. E. DeSeve ( CN=G. E. DeSeve/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

CC: Josie R. Dade ( CN=Josie R. Dade/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

CC: Vanna J. Shields ( CN=Vanna J. Shields/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

CC: Abigail C. Smith ( CN=Abigail C. Smith/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

CC: Mary M. Chuckerel ( CN=Mary M. Chuckerel/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TEXT:

Following is LRM ID: SGE197, a draft SAP on S2176, the "Federal Vacancies Reform Act of 1998." Please read and respond to it by 4:30 p.m., TODAY, Wednesday, September 23. The draft SAP, which closely follows Chief of Staff Bowles' 07/28 letter to Senator Lott, is attached at the end of this e-mail.

Please see important comments in RED following the LRM header.

Unless you make a special request to me, you will not receive a paper copy of this LRM.

----- Forwarded by Stephen G. Elmore/OMB/EOP on 09/23/98  
02:35 PM -----  
Total Pages: \_\_\_\_

LRM ID: SGE197  
EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
Washington, D.C. 20503-0001

Wednesday, September 23, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference

OMB CONTACT: Stephen G. Elmore  
PHONE: (202)395-3924 FAX: (202)395-6148

SUBJECT: Statement of Administration Policy on S2176: Federal Vacancies Reform Act of 1998

DEADLINE: 4:30 p.m., TODAY, Wednesday, September 23, 1998

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: The Senate may begin consideration of S2176 tomorrow, Thursday, September 24. This statement closely follows the July 28 letter that White House Chief of Staff Erskine Bowles sent to Senator Lott.

DUE TO THE LIMITED TIME AVAILABLE FOR CLEARING THIS STATEMENT, YOU MAY NOT RECEIVE A REMINDER TO COMMENT. Please comment now.

You may access the text of this bill, as reported in the Senate, from the Thomas Web site: <http://thomas.loc.gov/>.

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117 and 340-TRANSPORTATION - Tom Herlihy - (202) 366-4687  
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123-US Information Agency - Ronna Freiberg - (202) 619-6828  
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129-VETERANS AFFAIRS - John H. Thompson - (202) 273-6666

##### EOP:

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Bruce D. Long  
Lisa B. Fairhall  
Raymond P. Kogut  
Robert G. Damus  
Steven D. Aitken  
Kate P. Donovan  
John Podesta  
Bob J. Nash  
Dorian V. Weaver  
Robert N. Weiner  
Tracey E. Thornton  
Roger S. Ballentine  
G. Timothy Saunders  
Michelle Peterson  
Julie A. Fernandes

RESPONSE TO  
LEGISLATIVE REFERRAL  
MEMORANDUM

Please include the LRM number shown above, and the subject shown below.

FROM: \_\_\_\_\_ (Date)  
 \_\_\_\_\_ (Name)  
 \_\_\_\_\_ (Agency)  
 \_\_\_\_\_ (Telephone)

\_\_\_\_\_ Concur

\_\_\_\_\_ No Objection

\_\_\_\_\_ No Comment

\_\_\_\_\_ See proposed edits on pages \_\_\_\_\_

\_\_\_\_\_ Other: \_\_\_\_\_

\_\_\_\_\_ FAX RETURN of \_\_\_\_\_ pages, attached to this response sheet

(Senate)

S. 2176 - Federal Vacancies Reform Act of 1998  
(Sen. Thompson (R) TN and 6 cosponsors)

The Administration cannot support S. 2176 in its present form. If the bill is not amended to address the Administration's concerns, the President's senior advisers would recommend that he veto the bill. S. 2176 would revise the process set forth in the Vacancies Act for filling vacancies in positions that are subject to Presidential appointment and Senate confirmation.

While certain provisions of S. 2176 are acceptable, several others are extremely problematic. In particular, the bill would (1) too narrowly limit who can serve in an acting capacity; (2) jeopardize critical duties pertaining to national security, criminal law enforcement, public health and safety, and the stability of financial markets; and (3) provide insufficient time to fill positions at the beginning of an Administration.

The Administration understands the Senate's genuine interest in passing legislation in this area and would be willing to support a fair and workable bill. The Administration cannot, however, support a bill that would have a severe and damaging impact on the government's ability to do the people's business.

\* \* \* \* \*

(Do Not Distribute Outside Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Elmore) in consultation with VAPD (\*\*\*), . . .

\*\*\* (\*\*) and \*\*\* (\*\*) concur with this position. The following agencies have no objection: \*\*\* have no comment.

OMB/LA Clearance: \_\_\_\_\_

S. 2176 was introduced on June 16, 1998. On June 17, 1998, the Senate Governmental Affairs Committee amended S. 2176 and ordered it reported. This position is based on Senate Report 105-250.

#### Administration Position to Date

On July 28, 1998, the White House Chief of Staff transmitted a letter to Senator Lott in which he expressed that the Administration cannot support S. 2176 in its present form and indicated that, if the bill is not amended to address the Administration's concerns, the President's senior advisers would recommend that he veto it. In addition, several agencies have responded to questions from Senator Glenn regarding the bill's expected effects on their respective agencies. In these letters, the agencies have almost uniformly expressed their strong opposition to the bill and have referred to the senior advisers' veto threat.

#### Summary of S. 2176

S. 2176 would provide that upon the death, resignation, or inability to serve of an officer of an Executive agency (including the Executive Office of the President and other than the General Accounting Office), the first assistant to the officer would become the acting officer, for a period

beginning on the date the vacancy occurs and not to exceed 150 days. (Currently, the acting officer may serve for 120 days.) As an alternative to this arrangement, the President would be able to direct that a person who has already received Senate confirmation could be made the acting officer in lieu of the first assistant. The bill also would require that a first assistant who has not received Senate confirmation, but who is nominated to fill the office permanently, could be made the acting officer only if he or she has been the first assistant for at least 180 days in the year preceding the vacancy. If a first or second nominee were withdrawn, or rejected or returned by the Senate, the acting official would be able to serve until 150 days after the withdrawal, rejection, or return of that nomination.

S. 2176 would apply to most vacancies in Senate-confirmed positions in Executive agencies, but there would be a few exceptions. First, those laws that expressly provide that they supersede the Vacancies Act would do so. Second, current laws (numbering approximately 41) that provide for the President or the head of an Executive department to designate an officer to perform the functions and duties of a specified office in an acting capacity would be maintained, as would those statutes that themselves stipulate who shall serve in a specific office in an acting capacity. Statutes that only generally permit agency heads to delegate or reassign duties within their agencies would be specified not to constitute statutes that provide for the temporary filling of particular offices.

S. 2176 contains an enforcement provision. The provision would require that an office be made vacant if, 150 days after the vacancy arises, the President has not submitted a nominee to the Senate. In such a case, for offices other than the heads of agencies, the functions and duties specifically to be performed by the vacant officer would be required to be performed only by the agency head. Such duties would include duties established by regulation for the officer during any part of the 180 days before the vacancy occurred, notwithstanding subsequent regulations that purported to limit those duties. The sanction could be ended if the President were to submit a nominee after the 150-day period, at which time the acting officer could resume service. Actions taken in violation of the vacant officer provisions would be of no effect and would not be permitted to be ratified by anyone else. The shifting of duties to the agency head would not apply to vacancies in the positions of general counsel to the National Labor Relations Board or the Federal Labor Relations Authority or to Senate-confirmed inspectors general, given the specific goal Congress established for those positions of independence from the agency heads.

The bill also would require the heads of Executive agencies to report to the General Accounting Office the existence of vacancies, persons serving in an acting capacity, the names of any nominees, and dates of disposition of such nominees. The Comptroller General then would report to the Congress, the President, and the Office of Personnel Management the existence of any violations of the Vacancies Act. The 150-day period for submitting nominations would be extended for an additional 90 days for vacancies that exist when a new President swears or affirms the oath of office as President or that arise in the 60 days thereafter. In addition, the bill would maintain holdover provisions in current law that apply to single-member independent agencies and would exempt members of multi-member independent agencies altogether, as the Vacancies Act does currently.

S. 2176 would apply to any office that becomes vacant after the date of enactment. In addition, it would apply to offices that are vacant on the date of enactment; however, the bill would apply to those offices as

though they first became vacant on the date of enactment.

#### Pay-As-You-Go Scoring

According to VAPD (\*\*\*) and BASD (\*\*\*), S. 2176 would not affect direct spending and receipts; therefore, it is not subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. CBO concurs.

#### LEGISLATIVE REFERENCE DIVISION DRAFT

September 23, 1998/2:30 p.m.===== ATTACHMENT 1 =====  
ATT CREATION TIME/DATE: 0 00:00:00.00

#### TEXT:

Unable to convert ARMS\_EXT:[ATTACH.D43]MAIL40631166X.226 to ASCII,  
The following is a HEX DUMP:

FF575043C2060000010A020100000000205000000AD2C00000000200002F0D389941CF0E4E7F7DCE



**DRAFT -- NOT FOR RELEASE**

September 24, 1998  
(Senate)

S. 2176 - Federal Vacancies Reform Act of 1998  
(Sen. Thompson (R) TN and 6 cosponsors)

**The Administration cannot support S. 2176 in its present form. If the bill is not amended to address the Administration's concerns, the President's senior advisers would recommend that he veto the bill. S. 2176 would revise the process set forth in the Vacancies Act for filling vacancies in positions that are subject to Presidential appointment and Senate confirmation.**

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\* \* \* \* \*

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**\*\*\* (\*\*) and \*\*\* (\*\*) concur with this position. The following agencies have no objection: \*\*\* have no comment.**

**OMB/LA Clearance: \_\_\_\_\_**

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#### Pay-As-You-Go Scoring

According to VAPD (\*\*\*) and BASD (\*\*\*), S. 2176 would not affect direct spending and receipts; therefore, it is not subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. CBO concurs.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Fred DuVal ( CN=Fred DuVal/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME:23-SEP-1998 14:54:12.00

SUBJECT: Tobacco

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Mickey Ibarra ( CN=Mickey Ibarra/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TEXT:

I have been briefed on the current terms being discussed by the AGs and 2 Tobacco Companies - which the AGs believe will be agreed to over the weekend.

If you haven't been briefed by others let me know.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME:23-SEP-1998 15:57:05.00

SUBJECT: Daily Updates for Senior Staff Mtg.

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TEXT:

----- Forwarded by Laura Emmett/WHO/EOP on 09/23/98 03:55 PM -----

Paul J. Weinstein Jr.  
09/16/98 10:12:44 AM

Record Type: Record

To: Laura Emmett/WHO/EOP

cc: See the distribution list at the bottom of this message

Subject: Re: Daily Updates for Senior Staff Mtg.

please keep in mind the purpose of daily updates. this is not like the weekly. one should submit a daily update only if their is "important and substantial" information that bruce or elena need to provide to senior white house staff at the morning meetings. this could include a congressional vote on a presidential initiative, or a front page story on an important issue related to the administration. the information provided should be no more than three sentences, maximum.

only page bruce or elena if you are unable to get the info to laura by 6:30 pm. if you can, provide the info in the page itself. remember, there are two morning meetings, 7:45 am and 8:15 am. do not page either bruce or elena during those meetings.

Message Copied

To: \_\_\_\_\_

Sarah A. Bianchi/OPD/EOP  
Michael Cohen/OPD/EOP  
Thomas L. Freedman/OPD/EOP  
Christopher C. Jennings/OPD/EOP  
Jennifer L. Klein/OPD/EOP  
Jeanne Lambrew/OPD/EOP  
Cathy R. Mays/OPD/EOP  
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Christa Robinson/OPD/EOP  
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Neera Tanden/WHO/EOP  
Jonathan H. Schnur/OPD/EOP  
Cynthia Dailard/OPD/EOP  
Teresa M. Jones/OPD/EOP

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Kate P. Donovan ( CN=Kate P. Donovan/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:23-SEP-1998 15:59:47.00

SUBJECT: Draft SAP: H.R. 4578 - Save Social Security Act of 1998

TO: Leslie Bernstein ( CN=Leslie Bernstein/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Kevin S. Moran ( CN=Kevin S. Moran/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Sarah A. Bianchi ( CN=Sarah A. Bianchi/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

TO: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

TO: Mindy E. Myers ( CN=Mindy E. Myers/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Dario J. Gomez ( CN=Dario J. Gomez/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Lisa Zweig ( CN=Lisa Zweig/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TO: Charles Konigsberg ( CN=Charles Konigsberg/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TO: Jeff B. Liebman ( CN=Jeff B. Liebman/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

TO: Sandra Yamin ( CN=Sandra Yamin/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TO: Michelle Peterson ( CN=Michelle Peterson/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Maria Echaveste ( CN=Maria Echaveste/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Michelle Crisci ( CN=Michelle Crisci/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Christopher C. Jennings ( CN=Christopher C. Jennings/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

TO: Janet Murguia ( CN=Janet Murguia/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Jessica L. Gibson ( CN=Jessica L. Gibson/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: Charles M. Brain ( CN=Charles M. Brain/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Elizabeth Gore ( CN=Elizabeth Gore/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TO: Joseph J. Minarik ( CN=Joseph J. Minarik/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TO: Jonathan Orszag ( CN=Jonathan Orszag/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

TO: Barbara Chow ( CN=Barbara Chow/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TEXT:

The House Rules Committee plans to meet tomorrow with floor action scheduled Friday, 9/25 regarding H.R. 4578 - Save Social Security Act of 1998. Please review the draft SAP with the position, Senior Advisers Veto Recommendation and provide comments/clearance by 10am tomorrow morning. Thank you.

DRAFT - NOT FOR RELEASE

September

23, 1998

(Hou

H.R. 4578 - Save Social Security Act of 1998  
Rep. Archer (R) TX

H.R. 4578 violates the President's pledge to save Social Security first. It calls for tens of billions of dollars to be drained out of projected budget surpluses before any action has been taken to strengthen Social Security for the long term or those surpluses happen. The President firmly believes that none of the projected surpluses should be touched until the long-term solvency of Social Security has been fully secured.

The unique opportunity to save Social Security must not be squandered. The Administration, therefore, strongly opposes H.R. 4578. If the bill were presented to the President in its current form, he would veto it.

\* \* \* \* \*

(Do Not Distribute Outside the Executive Office of the President)

This Statement of Administration Policy (SAP) was developed by the Legislative Reference Division (Haskins) in consultation with Director Lew, Associate Directors Chow and Minarik, Assistant Director Emery, EIML (Smalligan/Sauer), OIRA (Chenok), BASD (Lind/Kilpatrick/ Locke), OMB-LA (Konigsberg), and BRCD (Rea/Moran) as well as the White House Office of Policy Development (Rice) and the National Economic Council (Orszag/Marr/Liebman). The Departments of Health and Human Services (Wallace), Justice (Jones), Labor (McCarthy), the Treasury (Dorsey) and the Social Security Administration (Chesser) concur in this position.

OMB/LA clearance:



## Background

In his January 27, 1998, State of the Union Address, the President proposed that 100 percent of the Social Security surplus be reserved "until we have taken all the necessary measures to strengthen the Social Security System for the 21st century." He announced his schedule for achieving Social Security reform, inviting every American to participate in the reform process. The President called for nonpartisan regional forums followed by a White House Conference on Social Security in December 1998. In addition, the President declared that he would convene the leaders of Congress to draft "bipartisan" Social Security reform legislation in January 1999.

## Summary of H.R. 4578

H.R. 4578 was introduced on September 16, 1998, and ordered reported, as amended, by the House Committee on Ways and Means on September 17, 1998.

Within ten days of enactment, H.R. 4578 would require the Secretary of the Treasury, in consultation with the OMB Director, to project the estimated total Federal budget surplus during each of FYs 1998 through 2008. At the end of each of those fiscal years, the bill would require the Treasury Department to transfer funds from the General Fund into a special reserve account, the "Protect Social Security Account", an amount totaling 90 percent of the Federal budget surplus projected by the Department for that period. As under current law, the funds would be invested in non-marketable securities.

H.R. 4578 would define "total" Federal budget to include all spending and receipt accounts of the United States Government that are designated as "on-budget" or "off-budget" accounts.

According to OMB's Budget Review Division:

-- The 90 percent of the surplus for FYs 1998-2008 that is to be transferred to the Treasury "Protect Social Security" account would increase the debt subject-to-limit. Based on the estimates in the Mid-Session Review, H.R. 4578 would require that the debt limit be raised during the fall of 2000, two years earlier than under existing law.

-- Other than raising the debt subject-to-limit, the account has no effect on the budget totals and the "lock-box" does not prevent the Government from spending more than ten percent of the surplus for tax cuts or other purposes.

-- The Joint Committee on Taxation estimates that H.R. 4579, the Taxpayer Relief Act of 1998, would cost slightly more than ten percent of the cumulative surpluses even before considering the additional debt service costs associated with the tax cuts. If the current surplus projections were to be optimistic, the amounts available to protect Social Security would be well below the ninety percent that H.R. 4578 would place in reserve.

## Pay-As-You-Go

According to the Income Maintenance Branch (Sauer), H.R. 4578 would not affect direct spending or receipts; therefore, it is not subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990.

LEGISLATIVE REFERENCE DIVISION  
September 23, 1998 - 12:05 p.m.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Bradley M. Campbell ( CN=Bradley M. Campbell/OU=CEQ/O=EOP [ CEQ ] )

CREATION DATE/TIME:23-SEP-1998 16:37:15.00

SUBJECT: CHILDREN'S HEALTH BRIEFING

TO: Kris M Balderston ( CN=Kris M Balderston/OU=WHO/O=EOP [ WHO ] )

READ:UNKNOWN

TO: Anne E. McGuire ( CN=Anne E. McGuire/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TO: Rosina M. Bierbaum ( CN=Rosina M. Bierbaum/OU=OSTP/O=EOP @ EOP [ OSTP ] )

READ:UNKNOWN

TO: Elliot J. Diringer ( CN=Elliot J. Diringer/OU=CEQ/O=EOP @ EOP [ CEQ ] )

READ:UNKNOWN

TO: Robert S. Fairweather ( CN=Robert S. Fairweather/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Shannon Mason ( CN=Shannon Mason/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Wesley P. Warren ( CN=Wesley P. Warren/OU=CEQ/O=EOP @ EOP [ CEQ ] )

READ:UNKNOWN

TO: Pamela S. Barr ( CN=Pamela S. Barr/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Michele J. Altemus ( CN=Michele J. Altemus/OU=CEQ/O=EOP @ EOP [ CEQ ] )

READ:UNKNOWN

TO: Kathleen A. McGinty ( CN=Kathleen A. McGinty/OU=CEQ/O=EOP @ EOP [ CEQ ] )

READ:UNKNOWN

TO: Barbara Chow ( CN=Barbara Chow/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Sally Katzen ( CN=Sally Katzen/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Frances Sharples ( CN=Frances Sharples/OU=OSTP/O=EOP @ EOP [ OSTP ] )

READ:UNKNOWN

TO: Michael V. Terrell ( CN=Michael V. Terrell/OU=CEQ/O=EOP @ EOP [ CEQ ] )

READ:UNKNOWN

TO: Beth A. Viola ( CN=Beth A. Viola/OU=CEQ/O=EOP @ EOP [ CEQ ] )

READ:UNKNOWN

TO: Ronald M. Cogswell ( CN=Ronald M. Cogswell/OU=OMB/O=EOP @ EOP [ OMB ] )

READ:UNKNOWN

TO: Lisa Guide ( CN=Lisa Guide/OU=CEQ/O=EOP @ EOP [ CEQ ] )

READ:UNKNOWN

TO: Nancy Marlow ( CN=Nancy Marlow/OU=CEQ/O=EOP @ EOP [ CEQ ] )  
READ:UNKNOWN

TO: Claudia M. Abendroth ( CN=Claudia M. Abendroth/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Neera Tanden ( CN=Neera Tanden/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Christopher C. Jennings ( CN=Christopher C. Jennings/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: GARY GUZY <GUZY.GARY ( GARY GUZY <GUZY.GARY @ EPAMAIL.EPA.GOV> [ UNKNOWN ] )  
READ:UNKNOWN

TO: Jennifer L. Klein ( CN=Jennifer L. Klein/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Paul J. Weinstein Jr. ( CN=Paul J. Weinstein Jr./OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: T J. Glauthier ( CN=T J. Glauthier/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TEXT:

In response to several requests, the EPA-HHS briefing on the children's health initiative (originally scheduled for tomorrow) has been rescheduled for Tuesday, September 29, from 10:00 to noon in Room 476. Please let me know if you can attend at this new time.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Fred DuVal ( CN=Fred DuVal/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME:23-SEP-1998 16:55:02.00

SUBJECT: Re: Chiles

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TEXT:

- (1) not historically, but sadly, increasingly so.
- (2) indeed not! (but a liittle more wouldn't hurt!)

I briefed Bruce on what I'd learned on tobacco.

I've asked Charly Salem to try and build a coalition of states to come back to us and make the request again on the menu approach.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Kate P. Donovan ( CN=Kate P. Donovan/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 23-SEP-1998 17:02:57.00

SUBJECT: H.R. 4579 - Taxpayer Relief Act of 1998

TO: Maria Echaveste ( CN=Maria Echaveste/OU=WHO/O=EOP@EOP [ WHO ] )  
READ: UNKNOWN

TO: Michelle Crisci ( CN=Michelle Crisci/OU=WHO/O=EOP@EOP [ WHO ] )  
READ: UNKNOWN

TO: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP@EOP [ WHO ] )  
READ: UNKNOWN

TO: Janet Murguia ( CN=Janet Murguia/OU=WHO/O=EOP@EOP [ WHO ] )  
READ: UNKNOWN

TO: Jessica L. Gibson ( CN=Jessica L. Gibson/OU=WHO/O=EOP@EOP [ WHO ] )  
READ: UNKNOWN

TO: Robert G. Damus ( CN=Robert G. Damus/OU=OMB/O=EOP@EOP [ OMB ] )  
READ: UNKNOWN

TO: Charles M. Brain ( CN=Charles M. Brain/OU=WHO/O=EOP@EOP [ WHO ] )  
READ: UNKNOWN

TO: Lisa Zweig ( CN=Lisa Zweig/OU=OMB/O=EOP@EOP [ OMB ] )  
READ: UNKNOWN

TO: Charles Konigsberg ( CN=Charles Konigsberg/OU=OMB/O=EOP@EOP [ OMB ] )  
READ: UNKNOWN

TO: Theodore Wartell ( CN=Theodore Wartell/OU=OMB/O=EOP@EOP [ OMB ] )  
READ: UNKNOWN

TO: Leslie Bernstein ( CN=Leslie Bernstein/OU=WHO/O=EOP@EOP [ WHO ] )  
READ: UNKNOWN

TO: Kevin S. Moran ( CN=Kevin S. Moran/OU=WHO/O=EOP@EOP [ WHO ] )  
READ: UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP@EOP [ OPD ] )  
READ: UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP@EOP [ OPD ] )  
READ: UNKNOWN

TO: Mindy E. Myers ( CN=Mindy E. Myers/OU=WHO/O=EOP@EOP [ WHO ] )  
READ: UNKNOWN

TO: Michelle Peterson ( CN=Michelle Peterson/OU=WHO/O=EOP@EOP [ WHO ] )  
READ: UNKNOWN

TO: Dario J. Gomez ( CN=Dario J. Gomez/OU=WHO/O=EOP@EOP [ WHO ] )  
READ: UNKNOWN

TO: Charles R. Marr ( CN=Charles R. Marr/OU=OPD/O=EOP@EOP [ OPD ] )

READ:UNKNOWN

TO: Elizabeth Gore ( CN=Elizabeth Gore/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TO: Joseph J. Minarik ( CN=Joseph J. Minarik/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TO: Michael Deich ( CN=Michael Deich/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TEXT:

The House Rules Committee also plans to take up H.R. 4579 - Taxpayer Relief Act of 1998 tomorrow with House floor action possible Friday, 9/25. Position: POTUS will Veto. Please review and provide changes/clearance to me by 11am tomorrow. Many thanks.

DRAFT --- NOT FOR RELEASE

September xx, 1998

(House)

H.R. 4579 - Taxpayer Relief Act of 1998

(Archer (R) Texas)

The Administration strongly opposes H.R. 4579. If the bill were presented to the President, he would veto it.

H.R. 4579 would cut taxes by \$85 billion over five years and \$176 billion over 10 years. Virtually none of the bill's costs have been paid for. This blatantly violates the pay-as-you-go fiscal discipline of the Budget Enforcement Act -- discipline which has been an essential component of our remarkable economic revival. The President will veto any tax cut or spending bill that undermines fiscal discipline by changing the budget rules.

In addition, by draining billions out of projected budget surpluses, this bill violates the President's unwavering commitment to save Social Security first. None of the projected surpluses should be touched until the long-term solvency of Social Security has been fully secured. We must not squander this unique opportunity to save Social Security.

Last February in the FY 1999 Budget, the President proposed tax cuts targeted to help American families -- and proposed offsets to fully pay for the tax cuts. The Administration urges the Congress to consider tax cuts only if we can do so in a manner that adheres to the budget rules, maintains fiscal discipline, and meets the President's commitment to reserve the entire surplus until we have strengthened Social Security.

Pay-As-You-Go-Scoring

H.R. 4579 would affect revenues; therefore it is subject to the pay-as-you-go requirement of the Budget Enforcement Act. Under the Budget Enforcement Act, OMB would be required by law to impose automatic spending cuts on Medicare and other non-exempt mandatory spending programs in amounts sufficient to offset the revenue losses projected for FY 1999. In the absence of offsetting legislation, these automatic budget cuts would be triggered again in each of the following four years. These automatic cuts would affect: the special milk program, vocational rehabilitation, Stafford loans, foster care and adoption assistance, Medicare (up to four percent), and could also affect CCC, Child Support Enforcement, Social Services Block Grants, Immigration Support, Crop Insurance, Veterans

Education and Readjustment Benefits, and others. [Note: the last sentence in this paragraph may need to be revised or deleted following Rules Committee action.]

\* \* \* \* \*

(Do Not Distribute Outside Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Jones), in consultation with the Departments of the Treasury (Dorsey), Justice (Jones), the Social Security Administration (Chesser), the Council of Economic Advisers (Elmendorf), OMB Economic Policy (Minarik), and BASD (Lind, Barth).

The National Economic Council, the Office of White House Counsel, White House Legislative Affairs, OMB GC, HTFD, and OIRA did not respond to our request for comments on the draft SAP.

OMB/LA Clearance:

The House Committee on Ways and Means ordered H.R. 4579 reported by a vote of 23-15, on Sept. 17, 1998.

Administration Position to Date

The President, in a speech to the International Brotherhood of Electrical Workers on September 17th, stated that he would veto any bill "that squanders the surplus on tax cuts before we save social security."

Summary of H.R. 4579

The principal provisions of H.R. 4579, as reported, are described below.

-- Tax Provisions

Reduce the so-called "marriage penalty" by increasing the standard deduction couples can claim from approximately \$7,200 to \$8,600 (effective for tax years beginning after December 31, 1998);

Make the increase from \$625,000 to \$1 million of the unified estate tax and gift tax exclusion effective after December 31, 1998. Currently, that exclusion is to increase gradually to \$1 million in 2006;

Eliminate Federal income taxes on the first \$400 of interest income for couples and \$200 for singles (effective for tax years beginning after December 31, 1998);

Allow certain nonrefundable personal tax credits (e.g., child credits, HOPE and lifetime learning credits) to offset an individual taxpayer's minimum tax liability as well as their regular tax liability. (Current law permits these credits to be applied only against the regular tax liability);

Make health insurance costs for self-employed individuals fully deductible, retroactive to January 1, 1998. Current law would make these costs fully deductible for tax years beginning January 1, 2007;

Extend the research tax credit (expired 7/1/98), the Work Opportunity tax credit (7/1/98), and the Welfare-to-Work tax credit (4/30/99) to February 29, 2000; and



Increase the maximum amount of annual investment in qualified property by a small business to \$25,000 for taxable years beginning after December 31, 1998. Current law phases in an increase from the current maximum of \$18,500 to \$25,000 over five years;

Designate 20 [renewal communities] and make businesses in these areas eligible for various forms of tax relief;

Permit private higher education institutions to establish tax-free prepaid tuition programs (Currently, only public institutions may establish such programs);

-- Trade and Tariff Provisions

Extend the Generalized System of Preferences (GSP), which expired on June 30, 1998, to February 29, 2000;

-- Revenue Offsets

Include in the income of certain shareholders dividends distributed to liquidate a real estate invest trust or regulated investment company.

-- Social Security Provisions

Increase to \$37,941 in 2008 the amount a social security recipient between the age of full retirement (currently 65) and 70 years old can earn before their benefit amount is reduced. Currently, that amount is \$14,500.

Delay the recomputation of benefits for social security recipients who continue to work after normal retirement age until January 1st of the second year following the year of the earnings.

Pay-As-You-Go Scoring

According to BASD (Barth) and the Treasury, H.R. 4579 would affect receipts, and therefore, it is subject to the pay-as-you go rules of the Omnibus Budget Reconciliation Act (OBRA) of 1990. H.R. 4579 would result in net budget costs of \$10.6 billion in FY 1999 and \$85.5 billion over FYS 1999-2003. The Joint Committee on Taxation estimates that the bill will reduce revenues by \$6.6 billion in FY 1999 and \$80.1 billion over FYS 1999-2003.

LEGISLATIVE REFERENCE DIVISION

September 23, 1998 - 11:30 AM

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Jordan Tamagni ( CN=Jordan Tamagni/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME:23-SEP-1998 17:59:41.00

SUBJECT: Revised Final CHC remarks -- changes in bold

TO: Jonathan Orszag ( CN=Jonathan Orszag/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Minyon Moore ( CN=Minyon Moore/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Mickey Ibarra ( CN=Mickey Ibarra/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Jake Siewert ( CN=Jake Siewert/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Melissa G. Green ( CN=Melissa G. Green/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Janet Murguia ( CN=Janet Murguia/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Maria Echaveste ( CN=Maria Echaveste/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

Draft 9/23/98 6:00pm  
Jordan Tamagni

PRESIDENT WILLIAM J. CLINTON

REMARKS FOR CONGRESSIONAL HISPANIC CAUCUS INSTITUTE DINNER

WASHINGTON, DC

September 23, 1998

Acknowledgments: SBA Administrator Alvarez; Sec. Richardson; Sec. Caldera ; Sec. Riley; Sec. Herman; Sec. Cuomo; Sec. Daley; Sec. Shalala; Sec. Slater; ONDCP Dir. McCaffrey; AG Reno; Members of the Hispanic Caucus; other Members of Congress.

Before we begin, I want to say a word about Hurricane Georges [zhorzhe]. In Puerto Rico, the U.S. Virgin Islands, Haiti, and the Dominican Republic, businesses and homes have been swept away, and, tragically, lives have been lost. Tonight, our thoughts and prayers are with the victims of this terrible storm. FEMA Director James Lee Witt has told me that we are already assisting in the clean up effort, and helping the people of Florida to prepare for the hurricane. And will be there every step of the way to help families and communities to rebuild.

Now, I'd like to pay tribute to the two men we are honoring here tonight -- Rep. Henry Gonzalez, and Rep. Esteban Torres. With his

stubborn insistence on standing on the House floor and standing up for principle, [Henry B.] he has been more than a pioneer -- he has been a conscience for the Congress and the country. Esteban Torres was not content merely to walk on a trail blazed by leaders like Henry -- he has widened it. From his days as a UAW shop steward to his days as chair of this caucus, he has fought tirelessly to make certain that economic growth benefits all working people, not only of this country but of Mexico as well.

For six years in a row, I have looked forward to coming here -- to join in the energy and the drive and the dedication of the fastest growing community in America. I know that the Vice President was with many of you at the Hispanic Heritage Awards. In so many ways, that rich heritage -- its values of family and faith, community and commitment -- is America's heritage, too. That legacy is at the heart of everything the Hispanic Caucus stands for -- and I have been honored to work alongside you. I'd like to reflect on all we have accomplished together.

Together, we expanded the Earned Income Tax Credit and helped cut taxes for 15 million hard-working families -- including more than 1 million Hispanics. When the Republicans tried to slash it we said no. Together, we increased the minimum wage to give 10 million Americans -- including nearly 2 million Hispanic Americans -- a well-deserved raise. Now, I think it's time to increase the minimum wage again, and I am disappointed that yesterday the Senate voted against doing just that. We value families -- we should raise the value of the minimum wage.

Together we fought for and won the biggest increase in children's health care in more than three decades, to insure up to 5 million uninsured children across this country. We expanded the Head Start program to help our children get off on the right foot. We passed the Family and Medical Leave Act that gave millions of people the chance to take time off from work to care for an ailing parent or a newborn child.

Together, we have opened the doors of higher education with the HOPE Scholarship, with more Pell Grants, with tax credits for all higher education, with deductible student loans. Because of our efforts, everyone who is willing to work hard can go to college.

Together with the Vice President's leadership, we created more than 100 empowerment zones and enterprise communities, established community development banks, doubled small business loans to minorities and tripled them to women. In fact, businesses owned and operated by Hispanic women are the fastest growing category of small business in America today. Together we shaped and passed the historic crime bill that is taking guns off our streets, putting more police on our streets and more prevention to keep our children out of trouble in the first place.

Together, we have built a stronger America: nearly 17 million jobs ... the lowest unemployment rate in 28 years ... the lowest Hispanic unemployment rate in a generation ... the fastest real wage growth in 20 years ... a record number of new small businesses every year ... violent crime down a record six years in a row ... and the lowest crime rate in 25 years. None of this could have happened without the leadership, the friendship, the ideas of the CHC.

I also want to give much-deserved credit to my staff [Maria Echaveste, Mickey Ibarra, Janet Murguia, Maritza Rivera, Estela Mendoza, to name only a few]. One of my proudest accomplishments has been assembling the most diverse administration in history. We are not successful in spite of our

diversity -- we are successful because of it.

□,

Now, we must decide what we should do with this moment of prosperity and progress -- how can we use the resources it is producing and the self-confidence it is generating -- to build a brighter future for all our people?

Some people think that now is the time to kick back and relax. But there is an old Mexican proverb that says: □&El que no siembra, no levanta□8 [ell kay no see-EM-bra no leh-VAHN-tah] -- □&He who doesn□,t sow, doesn□,t get a crop.□8 We must use this time to sow the seeds of the future, and build the America we want for our children. And we cannot afford to rest.

I say we cannot rest until we save Social Security for the 21st Century. In a few days, we will have the first balanced budget and surplus in 29 years. I believe we must not squander one penny of that surplus until we have saved Social Security. Some say we should use the surplus to pay for a tax cut. My balanced budget proves that we can reserve the surplus, save Social Security, and still have targeted tax cuts for education, the environment, school construction, and child care. And every one of those tax cuts is paid for in my balanced budget.

We cannot rest until all children in all communities have a world-class education. My balanced budget will help to hire 100,000 more teachers ... to reduce class size in the early grades to 18 ... to build or modernize 5,000 schools ... to hook up all our classrooms, even in the poorest neighborhoods, to the Internet ... to reward school districts for undertaking the kind of sweeping reforms we□,ve seen in cities like Chicago ...to hire 35,000 more teachers to teach in the inner city and other struggling communities.

You and I know that education is the key to opportunity. But you also know that far, far too many Hispanic young people are not getting the education they need to succeed. That is why I established the Presidential Advisory Commission on Educational Excellence for Hispanics. And that is why I have proposed a \$600 million Hispanic Education Action Plan: to transform schools with high dropout rates ...to support Hispanic colleges ... to help adults who want to learn English or go back and get a diploma ... to help all Latinos, young and old, to reach for their dreams.

And you and I know our children must master English. That is why I fought for and won a 35% increase in bilingual education funding in the balanced budget agreement. This will help 1,000 school districts all across America to improve teacher training and add extra classes for students who have not yet mastered English. And I am proposing that we double that investment in teacher training this year, and help communities to train 20,000 teachers to help children with limited English.

Let me be clear: I believe that being able to speak more than one language is a gift -- but unless our children learn English, they will never reach their full potential. We shouldn□,t have to fight divisive political battles to do what is right for our children.

I say we cannot rest until we protect our families with a strong, enforceable Patients□, Bill of Rights. Managed care can help make health care more affordable for more families. But with 160 million Americans in managed care today, we must say to these plans: Don□,t turn people away from an emergency room. Don□,t turn people away from a specialist. Do n□,t let an accountant make decisions only a doctor should make.

Traditional care or managed care, every American deserves quality care.

We cannot rest while our communities are segregated by income and by race. The Federal Government should lead the way both in words and in deeds. I have asked Sec. Cuomo to crack down on unfair housing practices by doubling the number of housing discrimination cases. I have also directed Secretary Cuomo to work with you to undertake a major legislative overhaul so our public housing admissions policies help deconcentrate poverty, mix incomes, and thereby mix people of all races and ethnicities. We cannot live together as a nation if we don't live together in our communities. Let's work together on this.

We cannot rest until every community, every neighborhood, every family can reap the benefits of our economic growth. That is why we must fund the empowerment initiatives the Vice President and Secretary Cuomo have worked so hard for, from expanding funding for community development banks and revitalizing urban brownfield areas, to restoring summer jobs for our young people, and providing housing assistance for people moving from welfare to work.

We should all be proud that we have the smallest percentage of our people on welfare in 29 years -- with nearly 4 million fewer people since I signed the welfare reform bill into law. We should all be proud that we made good on our promise to restore some benefits to legal immigrants. But we know that there is much to be done.

The pressures to move from welfare to work are intense, and the transition can be especially difficult for Hispanic women, many of whom lack language as well as job skills. I am committed to working with you to ensure that every individual has the tools to make this transition. That's why I fought for a \$3 billion Welfare to Work fund in the balanced budget, and \$50 million more for Welfare to Work transportation. And that is why I have proposed a \$21 billion child care initiative, to add to the \$4 billion we fought for in the Welfare bill. We can do this -- but we cannot rest.

I say we cannot rest until every American's voice can be heard in the halls of power -- that is one very good reason why we must ensure a fair and accurate Census. Some in Congress would have us ignore the best scientific methods for ensuring the most accurate count. This is unacceptable. In 1990, 5 percent of Hispanics were not counted; nearly 70,000 Hispanic children in Los Angeles County alone were left out. In the year 2000, we can -- and must -- do better. This is a fundamental issue, a crucial civil rights issue. Every American counts. We must count every American.

And while we're at it -- let's give the 4 million people of Puerto Rico the right to choose their own status. In December, they will go to the polls. The Senate Republican leaders say they will "consider" the results of that referendum. I say we must respect the results of that referendum -- and work to implement the choice the Puerto Rican people make. Puerto Ricans are U.S., and nationhood, statehood, or status quo, the decision must be theirs to make.

We cannot rest until we contain economic turmoil in Russia and Asia and help spur economic growth throughout the world. Growth at home depends upon growth abroad. Many of you came with me when I traveled to Latin America earlier this year, and we saw the spirit of entrepreneurship that is making Latin America one of the world's fastest growing economies. I have urged the major industrial economies to stand ready to use the \$15

billion in emergency IMF funds to help stop the financial contagion from spreading to Latin America and elsewhere. And we must further help the IMF by paying our fair share.

We know that expanding trade is good for our economy, but we must not lose sight of the fact that some communities are not sharing fully in benefits of trade. I have proposed a significant expansion of funds for the development bank that helps these communities. We need to work together to ensure that we get these funds. Trade is good for America -- we need to make sure that it is good for every American.

Finally, we cannot rest until we solve the oldest, most stubborn, most painful challenge of our nation -- the lingering problems and limitless possibilities of our growing diversity. Last week, for the final time, I met with my Advisory Board on Race and received their report. I am proud of their work, the guidance they have given us for policy, for dialogue, for specific practices in every community in this country. But we know we have only just begun a work that will take a lifetime; only just begun to find ways finally to lift the burden of racial and ethnic discrimination, and redeem the full promise of America.

More than any other nation on earth, America has drawn our strength from our diversity, as wave after wave of immigrants have come here in search of a better life. Today, we are the most ethnically and racially diverse democracy in the history of the world. With nearly one million people coming legally to America every year from countries all over the world, we must ask ourselves: will these changes strengthen and unite us, or weaken and divide us?

I believe that immigration is not only good for America -- it is America. It is our history -- it is our heritage -- and it is our hope for the future. As ethnic conflicts tear countries and families apart around the world, we are proving that a diverse people can live together in peace, learning from each another, drawing on each other's strengths, building on one another's accomplishments.

We must welcome new immigrants, and do everything we can to encourage them to learn our language, embrace our way of life, and become full participants in our society by becoming citizens. That is why I have called on the INS to streamline and improve the naturalization process. My balanced budget would help reduce the backlog of applications and improve customer service. When people take responsibility to become citizens, we should do everything we can to help them -- whether they work in a Fortune 500 company, in a department store, or in the fields. They deserve a chance -- and we must give it to them.

America has always stood proud as a nation dedicated to widening the circle of opportunity, to deepening the meaning of our freedom, and to forming that more perfect union. One of the most passionate advocates for those ideals our country has ever known -- indeed, one of our greatest American heroes -- was Cesar Chavez. Thirty years ago, he met a kindred spirit in Robert Kennedy, who had traveled to California where Chavez lay, fasting in penance for the violence caused by the struggle for farm workers rights. That night, Bobby Kennedy and Cesar Chavez broke bread together in a Thanksgiving Mass. Someone read the words Chavez was too weak to speak -- words I would like to share with you tonight: "Our lives are all that really belong to us, so it is how we use our lives that determines what kind of people we are." That night, Robert Kennedy made up his mind to run for President.

□,

My friends, you and I are bound together by our commitment to use our lives to make this country a better place for all our people, to build a better world for our children. This is not a time to rest. It is time to work. I am honored to share this precious moment in time with all of you, and to work together to build that better world.

Thank you and God bless you all.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Andrea Kane ( CN=Andrea Kane/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME: 23-SEP-1998 18:56:19.00

SUBJECT: What new CPS numbers tell us about employment of welfare recipients

TO: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ: UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ: UNKNOWN

TO: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [ OPD ] )

READ: UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )

READ: UNKNOWN

TEXT:

Thanks to good cooperation from Census staff and hard work on the part of Richard Bavier at OMB, we've been able to take a preliminary look at what the March 1998 CPS data show on employment of welfare recipients. The news looks good -- the percentage of people receiving welfare in 1997 who reported they were working in March 1998 continues to grow, even while caseloads continue to fall dramatically. Even as we get to the harder part of the caseload, we are not yet seeing any slowdown in people to move from welfare to work

FYI, the increase between 97 and 98 is not nearly as dramatic as the "nearly 30% increase" between 96 and 97 that the President talked about at the August 4th event and is reported in the TANF Report to Congress. I don't think we're ready to talk about the numbers yet -- but here they are for your information.

What was in TANF report to Congress and POTUS announcement 8/4

	March 96	March 97	% Change
Previous yr			
AFDC recipients			
employed the			
following			
March	24.6%	31.5%	28%

March 98 CPS numbers, using slightly different series to account for change in question

	March 96	March 97	% Change	March 98	% Change
Previous yr					
cash welfare					
recipients					
in families w/					
kids	26.5%	31.8%	20%	33.8%	6%

We need to do some more work to figure out what's going on, and how to talk about it. It could partly reflect a change in the way Census asked the question. Also, the CPS experts say you can't conclude much from relatively small year to year jumps due to the relatively small sample (several thousand people) -- rather what's important is the trend.



RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Kate P. Donovan ( CN=Kate P. Donovan/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:23-SEP-1998 19:49:43.00

SUBJECT: S. 2176 - Federal Vacancies Reform Act of 1998

TO: Lisa Zweig ( CN=Lisa Zweig/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TO: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Robert N. Weiner ( CN=Robert N. Weiner/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Bob J. Nash ( CN=Bob J. Nash/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Kevin S. Moran ( CN=Kevin S. Moran/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Jessica L. Gibson ( CN=Jessica L. Gibson/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Janelle E. Erickson ( CN=Janelle E. Erickson/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Michelle Crisci ( CN=Michelle Crisci/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

TO: Dorian V. Weaver ( CN=Dorian V. Weaver/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: John Podesta ( CN=John Podesta/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: G. E. DeSeve ( CN=G. E. DeSeve/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TO: Tracey E. Thornton ( CN=Tracey E. Thornton/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Roger S. Ballentine ( CN=Roger S. Ballentine/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

Below is the draft SAP for S. 2176 - Federal Vacancies Reform Act of 1998. The SAP reiterates the position released in the 7/28/98 Bowles letter: Senior Advisers would recommend veto (please call me @5-9136 if you need a copy). The Senate is expected to hold a cloture vote on the motion to proceed to the bill tomorrow morning (Thurs. @9:30am). We aim to get the SAP to the Hill later in the morning. Please provide comments/clearance by 11:00am. Thank you.

DRAFT - NOT FOR RELEASE

September 23, 1998  
(Senate)

S. 2176 - Federal Vacancies Reform Act of 1998  
(Sen. Thompson (R) TN and 6 cosponsors)

The Administration cannot support S. 2176 as reported by the Senate Governmental Affairs Committee. If the bill is not amended to address the Administration's concerns, the President's senior advisers would recommend that he veto the bill. S. 2176 would revise the process set forth in the Vacancies Act for filling vacancies in positions that are subject to Presidential appointment and Senate confirmation.

Making the Vacancies Act the exclusive governing statute for appointing acting officers, as S. 2176 does, would largely address the concerns that Senators have raised. S. 2176, however, goes well beyond that, and in doing so, threatens the ability of the Executive branch to fulfill its statutory and constitutional obligations. This threat arises, in particular, because the bill would: (1) too narrowly limit who can serve in an "acting" capacity; (2) provide no safety valve for instances in which the bill might interfere with critical duties pertaining to national security, criminal law enforcement, public health and safety, the stability of financial markets, and the oversight of financial institutions; and (3) provide insufficient time to fill positions, especially at the beginning of an Administration.

The Administration understands the Senate's genuine interest in passing legislation in this area and would be willing to support a fair and workable bill. It is troubling, however, that the Senate would so severely restrict the Administration's ability to fill vacant positions and do the people's business while at the same time confirming the President's nominees at an astonishingly slow pace. The Administration simply cannot support a bill that would have such a severe and damaging impact on the Government's ability to function.

\* \* \* \* \*

(Do Not Distribute Outside Executive Office of the President)

This Statement of Administration Policy (SAP) was developed by the Legislative Reference Division (Elmore). White House Counsel (Weiner) and White House Legislative Affairs (Ballentine) concur with the position. VAPD (Kogut) and the White House Executive Clerk (Saunders) have no objection. Deputy Director for Management (DeSeve) has no comment.

The Department of Veterans Affairs (Hall) concurs with this position. The following agencies have no objection: the Departments of Justice (Jones), the Treasury (Dorsey), Commerce (Dowell), and the Office of Personnel Management (Wolf), and the Agency for International Development (Miller). The following agencies have no comment: the Departments of Agriculture (Julie) and the Interior (Schwartz), the Corporation for National and Community Service (Sofer), Environmental Protection Agency (Schneider), General Services Administration (Ratchford), National Aeronautics and Space Administration (Jarrel), Office of National Drug Control Policy (Rivait), Small Business Administration (Hontz), and Social Security Administration (Chesser).

OMB/LA Clearance: \_\_\_\_\_

S. 2176 was introduced on June 16, 1998, and reported by the Senate

Governmental Affairs Committee on July 15, 1998.

#### Administration Position to Date

On July 28, 1998, the White House Chief of Staff transmitted a letter to Senator Lott stating that the "Administration cannot support S. 2176 in its present form. If the bill is not amended to address the Administration's concerns, the President's senior advisers would recommend that he veto the bill." In addition, several agencies have responded to questions from Senator Glenn regarding the bill's expected effects on their respective agencies. In these letters, the agencies have almost uniformly expressed their strong opposition to the bill and have referred to the senior advisers' veto threat in the Chief of Staff's letter. This SAP is consistent with the position and concerns stated in the July 28th letter.

#### Summary of S. 2176 (Based on the Committee Report)

S. 2176 would provide that upon the death, resignation, or inability of an Executive agency officer to serve in a position requiring Presidential appointment and Senate confirmation, the first assistant to the officer would become the acting officer, for a period beginning on the date the vacancy occurs and not to exceed 150 days. (Currently, the acting officer may serve for 120 days.) As an alternative to this arrangement, the President would be able to direct that a person who has already received Senate confirmation could be made the acting officer in lieu of the first assistant. The bill also would require that a first assistant who has not received Senate confirmation, but who is nominated to fill the office permanently, could be made the acting officer only if he or she has been the first assistant for at least 180 days in the year preceding the vacancy. If a first or second nominee were withdrawn, or rejected or returned by the Senate, the acting official would be able to serve until 150 days after the withdrawal, rejection, or return of that nomination.

S. 2176 would apply to most vacancies in Senate-confirmed positions in Executive agencies, but there would be a few exceptions. First, those laws that expressly provide that they supersede the Vacancies Act would do so. Second, current laws (numbering approximately 41) that provide for the President or the head of an Executive department to designate an officer to perform the functions and duties of a specified office in an acting capacity would be maintained, as would those statutes that themselves stipulate who shall serve in a specific office in an acting capacity. Statutes that only generally permit agency heads to delegate or reassign duties within their agencies would be specified not to constitute statutes that provide for the temporary filling of particular offices.

S. 2176 contains an enforcement provision that would require that an office be vacant if, 150 days after the vacancy arises, the President has not submitted a nominee to the Senate. In such cases, for offices other than the heads of agencies, the functions and duties specifically to be performed by the vacant office would be required to be performed only by the agency head. Such duties would include duties established by regulation for the office during any part of the 180 days before the vacancy occurred, notwithstanding subsequent regulations that purported to limit those duties. The sanction could be ended if the President were to submit a nominee after the 150-day period, at which time the acting officer could resume service. Actions taken in violation of this vacant office provision would have no effect and could not be ratified by anyone else.

S. 2176 would extend for an additional 90 days the 150-day period for submitting nominations for vacancies that exist when a new President swears or affirms the oath of office as President or that arise in the 60 days thereafter. In addition, the bill would maintain holdover provisions in current law that apply to single-member independent agencies and would exempt members of multi-member independent agencies altogether, as the Vacancies Act does currently.

The bill also would require the heads of Executive agencies to report to the General Accounting Office the existence of vacancies, persons serving in an acting capacity, the names of any nominees, and dates of disposition of such nominees. The Comptroller General then would report to the Congress, the President, and the Office of Personnel Management the existence of any violations of the Vacancies Act.

S. 2176 would apply to any office that becomes vacant after the date of enactment. In addition, it would apply to offices that are vacant on the date of enactment; however, the bill would apply to those offices as though they first became vacant on the date of enactment.

#### Pay-As-You-Go Scoring

According to VAPD (Kogut), S. 2176 would not affect direct spending and receipts; therefore, it is not subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. CBO concurs.

LEGISLATIVE REFERENCE DIVISION DRAFT  
September 23, 1998 - 6:36 p.m.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Julie A. Fernandes ( CN=Julie A. Fernandes/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:23-SEP-1998 20:18:08.00

SUBJECT: H-1B -- deal

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Cathy R. Mays ( CN=Cathy R. Mays/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )

READ:UNKNOWN

TEXT:

We have reached a deal with Abraham on the H-1B bill. The bill includes:

(1) a \$500 fee for each visa (including a fee for renewals); money to be used by JTPA; minority scholarships; increased DOL enforcement.

(2) a recruitment and a no lay-off attestation for H-1B dependent employers (those with a workforce that is more than 15% H-1B; with an additional carve-out from some small businesses)

(3) a three year increase in the visas (FY99 = 115,000; FY 2000 = 115,000; FY 2001 = 107,500)

(4) changes the definition of the prevailing wage to include total compensation

(5) does not permit job shops to place H-1B workers with end-employers who have just laid off a comparable U.S. worker.

(6) increases penalties for violations (up to 3-year debarment and \$35,000)

What we lost on the last round:

(1) DOJ administers the process for receiving a complaint from an individual that the employer failed to comply with the recruitment attestation (we wanted DOL to administer)

(2) DOL enhanced enforcement authority is temporary -- sunsets with the visa increase (we wanted it to be permanent)

Those are the highlights. You will see a draft of the SAP, plus a more detailed description of the bill, in the morning. The bill is scheduled to be the last thing that the House considers tomorrow.

julie

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Kate P. Donovan ( CN=Kate P. Donovan/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:23-SEP-1998 20:40:23.00

SUBJECT: Need clearance: Agriculture Approps. conferees letter

TO: Thomas L. Freedman ( CN=Thomas L. Freedman/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

TO: Maria Echaveste ( CN=Maria Echaveste/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: RUDMAN\_M@A1@CD@VAXGTWY ( RUDMAN\_M@A1@CD@VAXGTWY [ UNKNOWN ] ) (NSC)  
READ:UNKNOWN

TO: Todd Stern ( CN=Todd Stern/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Kerri A. Jones ( CN=Kerri A. Jones/OU=OSTP/O=EOP@EOP [ OSTP ] )  
READ:UNKNOWN

TO: Kathleen A. McGinty ( CN=Kathleen A. McGinty/OU=CEQ/O=EOP@EOP [ CEQ ] )  
READ:UNKNOWN

TO: Joshua Gotbaum ( CN=Joshua Gotbaum/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TO: Martha Foley ( CN=Martha Foley/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Sally Katzen ( CN=Sally Katzen/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

TO: John Podesta ( CN=John Podesta/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Clifford J. Gabriel ( CN=Clifford J. Gabriel/OU=OSTP/O=EOP@EOP [ OSTP ] )  
READ:UNKNOWN

TO: Michelle Peterson ( CN=Michelle Peterson/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: G. E. DeSeve ( CN=G. E. DeSeve/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TO: Jeffrey M. Smith ( CN=Jeffrey M. Smith/OU=OSTP/O=EOP@EOP [ OSTP ] )  
READ:UNKNOWN

TO: Wesley P. Warren ( CN=Wesley P. Warren/OU=CEQ/O=EOP@EOP [ CEQ ] )  
READ:UNKNOWN

TO: Lisa M. Kountoupes ( CN=Lisa M. Kountoupes/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Ron Klain ( CN=Ron Klain/O=OVP@OVP [ UNKNOWN ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP@EOP [ OPD ] )

READ:UNKNOWN

TO: Gene B. Sperling ( CN=Gene B. Sperling/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

TO: Rahm I. Emanuel ( CN=Rahm I. Emanuel/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

CC: FARRAR\_J@A1@CD@VAXGTWY ( FARRAR\_J@A1@CD@VAXGTWY [ UNKNOWN ] ) (NSC)  
READ:UNKNOWN

CC: Victoria A. Wachino ( CN=Victoria A. Wachino/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

CC: Robert L. Nabors ( CN=Robert L. Nabors/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

CC: Paul J. Weinstein Jr. ( CN=Paul J. Weinstein Jr./OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

CC: Emil E. Parker ( CN=Emil E. Parker/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

CC: Lisa Zweig ( CN=Lisa Zweig/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

CC: Charles Konigsberg ( CN=Charles Konigsberg/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

CC: Shannon Mason ( CN=Shannon Mason/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

CC: Michelle Crisci ( CN=Michelle Crisci/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

CC: Jessica L. Gibson ( CN=Jessica L. Gibson/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

CC: Rosemary Evans ( CN=Rosemary Evans/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

CC: Adrienne C. Erbach ( CN=Adrienne C. Erbach/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

CC: Peter A. Weissman ( CN=Peter A. Weissman/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

CC: Judy Jablow ( CN=Judy Jablow/OU=CEQ/O=EOP@EOP [ CEQ ] )  
READ:UNKNOWN

CC: Charles R. Marr ( CN=Charles R. Marr/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

CC: Elizabeth Gore ( CN=Elizabeth Gore/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

CC: Jonathan H. Adashek ( CN=Jonathan H. Adashek/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

CC: Melissa G. Green ( CN=Melissa G. Green/OU=OPD/O=EOP@EOP [ OPD ] )  
READ:UNKNOWN

CC: Kevin S. Moran ( CN=Kevin S. Moran/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TEXT:

Below is the conferees letter for the Agriculture FY99 Appropriations bill. Conference action is expected Friday (9/25); therefore, we aim to get the letter out midday tomorrow (Thurs, 9/24). Please note that the veto position is open for discussion pending further consultation. Please provide your comments/clearance by noon tomorrow. Thank you.

The Honorable Bob Livingston  
Chairman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This letter provides the Administration's views on H.R. 4101, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, FY 1999, as passed by the House and by the Senate. As the conferees develop a final version of the bill, your consideration of the Administration's views would be appreciated.

The Administration welcomes congressional efforts to accommodate the President's priorities within the 302(b) allocation. The President's FY 1999 Budget proposes levels of discretionary spending for FY 1999 that conform to the Bipartisan Budget Agreement by providing savings through user fees and certain mandatory programs to help finance discretionary spending. In the Transportation Equity Act, Congress -- on a broad, bipartisan basis -- took similar action in approving funding for surface transportation programs paid for with mandatory offsets. In addition, this year, as in the past, such mandatory offsets have been approved by the House and Senate in other appropriations bills. We want to work with the Congress on mutually-agreeable mandatory and other offsets that could be used to increase high-priority discretionary programs in this bill. In addition, we urge the Congress to consider again the user fee proposals included in the President's budget, either adopting or modifying them to enable more resources to be directed to important initiatives such as those proposed for food safety, nutrition programs, rural development, agriculture research, and conservation.

The Administration's specific concerns with the bill as passed by the House and the Senate are discussed below. We look forward to working with you to resolve these concerns.

Food and Drug Administration

The Administration strongly opposes the House-passed provision that would prohibit FDA from using funds for the testing, development, or approval of any drug for the chemical inducement of abortion. The determination of safety and effectiveness is the cornerstone of the consumer protection established by the Federal Food, Drug, and Cosmetic Act and must continue to be based on the scientific evidence available to FDA. Prohibiting FDA from reviewing applications for particular products



could deprive patients of new therapies that are safer and more effective than those currently approved. Additionally, this provision could conceivably put women at risk because it might allow clinical trials of such drugs to proceed without FDA supervision. If the bill were presented to the President with this House provision, his senior advisors would recommend that he veto it.

In addition, the Administration strongly urges Congress to provide the full \$1,251 million in resources to fund the program level proposed for the Food and Drug Administration (FDA) in the President's budget. The Administration is deeply disappointed and concerned that neither the House nor the Senate has funded the President's request for FDA's tobacco enforcement activities. This funding is vital to the Administration's plan to reduce youth smoking. Failure thus far to pass comprehensive tobacco legislation should not prevent the Congress from providing adequate resources for these critical public health activities.

#### Food Safety Initiative

The Administration is deeply concerned that neither the House nor the Senate has fully funded the President's request for Food And Drug Administration (FDA) and USDA activities to enhance food safety, providing only \$16.8 million and \$68.9 million, respectively, of the \$96 million the President has requested for these activities. American consumers enjoy the world's safest food supply, but too many Americans get sick, and in some cases die, from preventable food-borne diseases. The President's initiative would expand food safety research, risk assessment capabilities, education, surveillance activities, and food import inspections. The Administration will work with Congress to explore options to offset the additional cost needed to fully fund the President's request.

#### Disaster Assistance

It is of critical importance that the Federal Government provide emergency funds to farmers facing the worst agricultural crisis in a decade. On September 22nd, the Administration submitted its request for \$2.3 billion in emergency assistance, including supplemental crop insurance indemnity payments, additional farm operating loans, and other vitally important programs. Although this request did not include income assistance to farmers for low commodity prices, Secretary Glickman communicated the Administration's support for such assistance through Senators Daschle and Harkin's proposal to remove the cap on marketing loan rates for 1998 crops. The Administration urges the Congress to provide assistance to address this urgent crisis.

#### Women, Infants, and Children

The President requested a funding increase in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), to reflect inflation adjustments and projected increases in participation. Based on new data indicating declining food package costs and stable WIC participation, it now appears that the Senate or lower House funding level will be sufficient to support the revised 7.4 million year-end participation level going into FY 1999. We commend the House and Senate for their hard work on this issue and if the conferees approve the House level, we urge that the additional resources in the Senate bill be reallocated to priorities detailed in this letter.

#### Civil Rights

The President is personally committed to righting any wrongs committed by USDA employees in years past. Therefore, the Administration strongly supports the provision passed in both the House and the Senate that waives the statute of limitations for individuals who have previously filed a discrimination claim against USDA. The Administration prefers the Senate version because it applies to both USDA farm and housing loans.

However, in a number of areas, the House and Senate have reduced funds to assist the most needy farmers and residents of rural communities. Neither the House nor the Senate has provided the requested increase for the Outreach for Socially Disadvantaged Farmers program, which was a key recommendation of the USDA Civil Rights Action Team (CRAT) report last year. With the additional \$7 million requested, USDA could support 35 projects to assist 10,000 small family farms and stem the decline in the number of minority farmers and ranchers. We urge the conferees to provide the full request.

The CRAT report also recommended increasing the amount of farm ownership loans, a portion of which are targeted to minority and beginning farmers. The Administration urges the conferees to provide an additional \$3 million requested for this program by the President, which would permit another 290 limited-resource farmers to finance real estate purchases.

#### Rural Development Funding

The Administration strongly objects to the provision in both bills that blocks FY 1999 spending in the mandatory Fund for Rural America. The Fund provides additional resources for rural development and innovative agricultural research that are vitally needed to improve the quality of life in rural America and increase the productivity of U.S. farmers. Congress created the Fund in 1996 to boost the overall Federal investment in these activities, not as a source of savings to offset discretionary spending. Moreover, Congress recently extended the authority for the Fund and increased its resources. The Administration urges the conferees to strike this provision.

In addition, the Senate bill does not fully fund the President's request for the Rural Community Advancement Program (RCAP), under-funding direct loans for water and wastewater and for community facilities. These loans provide the community infrastructure to improve the quality of life of rural Americans, and they often finance the vital ingredient for diversifying the rural economy. The Senate bill would fund 35 fewer water and wastewater facilities, serving 50,000 rural residents, as well as fewer rural health clinics, police and fire stations, and health care facilities than the President's request. We urge the conferees to adopt the House position, but to strike the House language that would limit the flexibility of USDA to transfer funds among programs, in order to allow the program to operate as intended and permit resources to be tailored to meet unique local needs.

#### Agriculture Research

Both the House and Senate have included over \$50 million in unrequested earmarks for low-priority research while funding competitive grants through the National Research Initiative (NRI) at \$30 million and \$35 million, respectively, below the President's request. Rejecting additional funds for competitive research grants for national and regional priorities in favor of earmarked grants for local interests fails to support the highest priority needs of American agriculture and consumers,

and the Administration urges the conferees to reverse this policy. We also believe that the conferees should reduce the unrequested increases in the Agricultural Research Service's buildings and facilities program and redirect these resources to higher priority programs.

The Administration strongly objects to the House's elimination of the \$120 million in competitively-awarded research funds authorized in the Agricultural Research, Extension and Education Reform Act of 1998. These funds would finance vital investments in food and agricultural genome research, food safety and technology, human nutrition, and agricultural biotechnology. We urge the conferees to support these important research efforts by restoring funds to the level requested.

#### Climate Change and Clean Water Initiatives and Conservation Programs

Neither the House nor the Senate has provided the \$7 million increase requested for research to support the Administration's Climate Change Technology Initiative. These funds would support high-priority research to reduce greenhouse gas emissions caused by agricultural practices, develop improved feedstocks that can generate energy, and improve techniques to convert agricultural products to biofuels. The Administration urges the conferees to restore funding to the requested level.

In addition, neither the House nor the Senate has included the Administration's requested increase of \$23 million for the Natural Resources Conservation Service (NRCS) to implement the President's Clean Water Action Plan to help State and local organizations hire watershed coordinators, document baseline conditions, and target resources to farmers requesting assistance. The Plan, developed by USDA and EPA, outlines a strategy on how to correct water quality problems, including polluted run-off, across the Nation. The Administration urges the conferees to provide these necessary funds to the NRCS.

The Administration strongly opposes House and Senate actions reducing or eliminating funding for several key mandatory USDA conservation programs, including the Environmental Quality Incentives Program, Wetlands Reserve Program, Wildlife Habitat Incentives Program, and Conservation Farm Option. These programs are essential for enhanced water quality, wildlife habitat, and soil conservation on American farms and throughout rural America and should be adequately funded.

#### Language Provisions

The Administration strongly objects to the House provision that would provide funding for research on nutrition programs within the Economic Research Service. Research on nutrition programs should occur in the context of the program's administration, and the Administration urges the conferees to provide funding for these activities within the Food and Nutrition Service, as requested and as included in the Senate bill.

The Senate bill purports to prohibit USDA personnel from preparing or submitting appropriations language regarding unenacted user fees unless the budget also identifies additional spending reductions should the user fees proposals not be enacted by an identified time. The Justice Department advises that this provision would violate the Recommendations Clause of the Constitution under which Congress can neither require nor prohibit that the President make legislative or policy recommendations to Congress. Because the funding restriction would undermine the President's ability to fulfill his constitutional duty under the Recommendations

Clause, it would be unconstitutional.

The Administration objects to the provision in the House and Senate versions of the bill that would limit Executive Branch review of USDA responses to congressional inquiries. The Administration urges the conferees to delete these provisions.

The Administration objects to a Senate provision that would prohibit the FDA from consolidating laboratory operations. The proposed consolidation offers the opportunity for better efficiency and mission coordination, and it is part of FDA's overall streamlining goals. The Senate provision would force FDA to spend funds on infrastructure that could otherwise be used more directly to protect public health. The Administration urges the conferees to drop this provision.

The Administration objects to section 741 of the House-passed bill that would allow Federally tax-exempt financing in conjunction with rural multi-family housing guarantees. Guarantees of tax-exempt obligations are an inefficient way of allocating Federal credit. Assistance to borrowers, through the tax exemption and the guarantee, provides interest savings to the borrower that are smaller than the tax revenue loss to the Government, and the cost to the taxpayer is, therefore, greater than the benefit to the borrower.

The Administration objects to the addition of Title XI to the Senate bill, would amend the alternative-fuel provisions of the Energy Policy Act of 1992. The amendment makes numerous changes to definitions and compliance credits, with the nominal intent of increasing demand for "biodiesel" -- a fuel derived from oil seeds such as rapeseed. The real effect, however, would be to gut most of the existing alternative-fuel requirements and policies. The amendment creates loopholes that would allow Federal agencies and other fleet operators to ignore, effectively, most alternative fuels, such as ethanol, natural gas, and electric vehicles. These loopholes would be easier for Federal agencies to exploit than for many private or State fleets. If the Energy Policy Act is to be amended, such action should be pursued through the energy authorization committees.

#### Other Issues

The Administration urges the conferees to provide additional funds for the farm labor housing program to improve the living conditions of many farm labor families. The House and Senate levels, \$20 million and \$16 million, respectively, are more than 35 percent below the Administration's request and would result in at least 230 fewer housing units being built compared with the request. The Administration urges the conferees to increase funding to assist these needy members of our society.

The House reduces by \$10 million and the Senate by \$20 million the President's request for the mandatory Emergency Food Assistance Program (TEFAP), which purchases commodities for individuals greatly in need of assistance. Given reported increases in need for food assistance through food banks and soup kitchens, the Administration is concerned that this reduction from the authorized level would mean less food will reach the most vulnerable Americans. In addition, food rescue and gleaning is a priority area that deserves additional funding in the USDA budget. The budget proposes \$20 million for this initiative to encourage greater private sector and community based involvement in food rescue.

Under the 1996 Food Quality and Protection Act, USDA has added

responsibilities to assist EPA with its re-registrations of pesticides and to develop new technologies for integrated pest management systems. Both bills fail to provide the requested additional funding to meet these urgent needs and, as a result, re-registrations may be based on incomplete understanding of actual pesticide use and exposure, jeopardizing the continued viability of current crop production patterns.

The House has provided only \$2 million of the requested \$22 million increase for the Inspector General as part of the Administration's law enforcement initiative, and the Senate has not provided any of the requested funds. The USDA initiative would save taxpayers millions of dollars lost through fraud in the food and nutrition programs as well as in USDA disaster, multi-family housing, and other programs. The initiative would also improve the integrity of many USDA programs. The Administration urges the conferees to increase funds for this important initiative.

We look forward to working with the conferees to address our mutual concerns.

Sincerely,

Jacob J. Lew  
Director

Identical Letter Sent to The Honorable Bob Livingston,  
The Honorable David R. Obey, The Honorable Joseph Skeen,  
and The Honorable Marcy Kaptur, The Honorable Ted Stevens,  
The Honorable Robert C. Byrd, The Honorable Thad Cochran,  
and The Honorable Dale Bumpers

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Peter A. Weissman ( CN=Peter A. Weissman/OU=OPD/O=EOP [ OPD ] )

CREATION DATE/TIME:23-SEP-1998 22:27:16.00

SUBJECT: The H-1B Deal

TO: Julie A. Fernandes ( CN=Julie A. Fernandes/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Debra J. Bond ( CN=Debra J. Bond/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Maria Echaveste ( CN=Maria Echaveste/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Barbara Chow ( CN=Barbara Chow/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Sally Katzen ( CN=Sally Katzen/OU=OPD/O=EOP [ OPD ] )  
READ:UNKNOWN

TO: Karen Tramontano ( CN=Karen Tramontano/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Larry R. Matlack ( CN=Larry R. Matlack/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: David W. Beier ( CN=David W. Beier/O=OVP @ OVP [ UNKNOWN ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Gene B. Sperling ( CN=Gene B. Sperling/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

CC: Laura Emmett ( CN=Laura Emmett/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: Leslie Bernstein ( CN=Leslie Bernstein/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: Shannon Mason ( CN=Shannon Mason/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

CC: Marjorie Tarmey ( CN=Marjorie Tarmey/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

CC: Sandra Yamin ( CN=Sandra Yamin/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

CC: Melissa G. Green ( CN=Melissa G. Green/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TEXT:  
To All:

As you know, we (finally!) reached an agreement with Sen. Abraham

tonight. Attached are the agreed upon changes to the Abraham-Smith proposal. There is a chance that the bill will reach the House floor tomorrow (Thursday), but we're trying to get it moved to Friday to give us more time to look over legislative language.

-- Ceci

===== ATTACHMENT 1 =====

ATT CREATION TIME/DATE: 0 00:00:00.00

TEXT:

Unable to convert ARMS\_EXT:[ATTACH.D21]MAIL47837366J.226 to ASCII,  
The following is a HEX DUMP:

FF57504317050000010A0201000000002050000000271D00000000200001BD7A290CBF56E27B93A71

**September 23, 1998**

**Changes to Abraham-Smith Proposal**

1. Requires a \$500 fee for each nonimmigrant for which an application is filed or renewed. Fee to fund training provided under JTPA Title IV (approx. 65%) and a percentage for a NSF scholarship and mentoring programs for minority students (approx. 30%). In addition, a portion of these revenues would fund the administration of the H-1B visa program, including the cost of enforcement (approx. 5%).
2. Defines H-1B-dependent employers as:
  - a. Employers with fewer than 25 employees and more than 7 H-1B workers; and
  - b. Employers with 26-49 employees and more than 12 H-1B workers; and
  - c. Employers with more than 50 workers where at least 15% of their workforce is H-1B.
3. The recruitment and no lay-off attestations applies to: (1) H-1B dependent employers; and (2) any employer who, within the previous 5 years, has been found to have willfully violated its obligations under this law.
4. H-1B dependent employers attests they will not place an H-1B worker with another employer, under certain employment circumstances, where the other employer has displaced or intends to displace a U.S. worker during the period beginning 90 days before and ending 90 days after the date the placement would begin.
5. DOL has the authority to investigate compliance either: (1) pursuant to a complaint by an aggrieved party; or (2) if the Secretary receives specific credible information, provides reasonable cause to believe that a willful violation, or pattern or practice of violations, or serious violations affecting multiple employees (or job applicants) may have occurred.
6. Appropriate sanctions for violations of "whistleblower" protections.
7. Closes loopholes in the attestations:
  - a. Strikes the provision that "[n]othing in the [recruitment attestation] shall be construed to prohibit an employer from using selection standards normal or customary to the type of job involved." Substitute with "[n]othing in the [recruitment attestation] shall be construed to prohibit an employer from using legitimate selection criteria relevant to the job that are normal and customary to the type of job involved, provided that the criteria are not applied in a discriminatory manner." Plus report language that this provision is not intended to subvert the recruitment attestation.
  - b. Clarifies that job contractors can be sanctioned for placing an H-1B worker with



an employer who subsequently lays off a U.S. worker within the 90 days following placement.

- c. Does not exempt H-1B workers with at least a master's degree or the equivalent from calculations of the total number of H-1B employees; and does not exempt workers who earn at least \$60,000.
  - d. Rather than defining lay-off based on termination for "cause or voluntary termination," adds "Nothing herein is intended to limit an employee's rights under collective bargaining agreements or other employment contracts."
- 8. Maintains status quo with regard to LCA approval and petition processes.
  - 9. Makes more explicit that the definition of U.S. workers does not include other H-1B workers for purposes of this bill.
  - 10. Includes a provision that prohibits unconscionable contracts (with civil fines).
  - 11. Includes a "no benching" requirement that an H-1B nonimmigrant in "non-productive status" for reasons such as training, lack of license, lack of assigned work, or other such reason (not including when the employee is unavailable for work) be paid for a 40 hour week or a prorated portion of a 40 hour week during such time.
  - 12. Increases the annual cap on H-1B visas to 115,000 in FY 1999, 115,000 in FY 2000, and 107,500 in FY 2001. After FY 2001, the visa cap returns to 65,000.
  - 13. Eliminates the 7500 cap on the number of non-physician health care workers admitted under the H-1B program to make the bill consistent with our obligations under the GATS agreement.
  - 14. Amends 212(n)(2)(C) (willful violations) to specify \$5000 penalty and 2 year debarment. Amends the new penalty section for willful violations plus layoff to specify \$35,000 penalty and 3 year debarment.
  - 15. Permanently broadens the definition of prevailing and actual wages to include other forms of compensation and benefits.
  - 16. Transfers administration of the arbitration process to the Attorney General.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Paul D. Glastris ( CN=Paul D. Glastris/OU=WHO/O=EOP [ WHO ] )

CREATION DATE/TIME:23-SEP-1998 23:06:55.00

SUBJECT: Draft of Friday's ed speech in Chicago--comments back ASAP please

TO: Robert M. Shireman ( CN=Robert M. Shireman/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Michael Cohen ( CN=Michael Cohen/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

TEXT:

Draft 9/23/98 11.00 pm

Paul Glastris

REMARKS BY PRESIDENT

WILLIAM J. CLINTON

AT JENNER ELEMENTARY SCHOOL

CHICAGO, IL

September 25, 1998

Acknowledgments: Mayor Richard Daley; Sec. William Daley; Chicago School Board Ch. Gery Chico; Chicago schools CEO Paul Vallas; Jenner principal Sandra Satinover; tk tk

I'd like to talk to you today about my abiding faith that public schools in America can and will be made dramatically better. It is a faith that I confess is not universally shared. There are many who believe that public education is in a permanent and irrevocable state of decline.

Yet when I was elected president six years ago, I recall many of those same people believed that the whole country was in a permanent decline--or at least that there was nothing government could do to help. Look around you today. America is back. We have the lowest unemployment rate in 28 years, with 16.7 million new jobs; the lowest crime rate in 25 years; the smallest percentage of people on welfare in 29 years; the lowest African American poverty rate since statistics have been kept; the lowest inflation in 32 years; the highest home-ownership in history; and in just tk days, for the first time in 29 years, all that red ink on the government's budget will turn to black.

How did all this happen? Because the American people worked hard, and because we in Washington worked hard, too, to give the American people the tools they needed to improve their lives. We cut taxes for 15 million hard-working families through the earned income tax credit. We increased the minimum wage to give 10 million Americans a well deserved raise. We fought for and won the biggest increase in children's health care in more than three decades. We expanded the Head Start program to help our children get off on the right foot. We made it possible for nearly 2 million more women and infants to get the nutritional care they need.

With the Family and Medical Leave Act, we gave millions of people the chance to take time off from work to care for an ailing parent or bond with a newborn child. We opened the doors of higher education with the HOPE Scholarship, with more Pell Grants, with tax credits for all higher education, with the deductibility of student loans. We created more than 100 empowerment zones and enterprise communities, established community development banks, doubled small business loans to minorities and tripled them to women. When people wanted to scrap affirmative action we said: mend it, don't end it. We banned the importation of assault weapons, put more police on the streets, and expanded prevention efforts to help keep kids out of trouble.

Like you, we've worked hard to make this a better country, and like you, we've prayed hard, too. And the Lord has been kind. He has blessed us with a stronger economy, stronger communities, and stronger families.

But our efforts cannot slacken just because things have gotten better. When the Lord gives you the good times you prayed for, He does not mean it as an invitation to stop going to church.

We must redouble our efforts especially to make sure every America child, regardless of race, ethnicity, or income, has access to the finest public elementary and secondary schools in the world. That's a demanding agenda, but we live in demanding times. In the new information economy, prosperity goes to countries with the best-educated workforces. We have no choice but to do more.

We must do more to promote the kind of actions that have made Jenner Elementary School a better center of learning. Twice as many students at Jenner are reading at grade level this year than last. One reason for that dramatic improvement is the extra help these children have been given by extraordinary group of volunteer tutors. I want to extend my personal thanks to those volunteers. I also want to thank WITS, the non-profit group that organizes these volunteers, as well as the corporate entities such as EVEREN Securities, which not only donate money to this effort, but allow their employees time off to help these children.

I believe we in Washington should also do our part to support efforts like WITS, and I am cautiously optimistic that we will. Right now, members of my administration are working with leaders in Congress on a measure that could mean federal dollars for WITS and other volunteer child literacy efforts. I applaud that spirit of bipartisanship, and I hope Congress will pass a bill before the end of the congressional session, so that its impact will be felt very soon, right here at Jenner School.

But let's be honest. No one program, all by itself, can seriously improve a complex enterprise like American public education. The tutoring helped here at Jenner. But so did a dozen other actions. Scores are up at Jenner, in part because attendance is up. And attendance is up in part because of a new safety program in which parents and volunteers escort the children to and from school. The truth is, there is no magic pill to cure what ails the schools. But a number of pills, taken all at once, will work. That is the lesson of Jenner. That is the lesson of school reform in Chicago. That is the lesson incorporated in my education agenda. And that is the lesson Congress must learn, by passing my each and every item of my education agenda, all at once, now.

Chicago schools are working better not because the mayor tried one idea, then another, then another; but because the mayor and Gery Chico and Paul Vallas took a range of bold actions, all at once. They required

school uniforms. They cracked down on truancy. They wrote tough new academic standards. They ended social promotion. They put under-performing schools on probation and reconstituted others with new principals and faculty.

Now, if you're going to raise the basketball hoop, as Rev. Jesse Jackson says, you better make sure the players have gym shoes. Mayor Daley has not only raised the hoop, he provided new gym shoes. He raised standards, but also offered support for students to meet those standards. Chicago schools now provide academically-enhanced summer school classes to struggling students; enriched afterschool care to children with working parents; preschool for the very young; even training for parents before children are even born.

Students won't come to school if they feel unsafe. Chicago schools today are safer inside and out. Students won't respect themselves, or their school, if the schools look as if no one respects them. Today, over a third of Chicago schools have been newly renovated, and every window in every school now gets cleaned at least once a year.

By doing all these things simultaneously, the Chicago schools, once considered hopeless, have begun to turn around. Reading and math scores are up. Attendance and graduation rates are up. And, interestingly, the schools with the most comprehensive reforms have done the best. Of the first 40 schools that raised standards and began offering afterschool tutoring and a hot dinner to poor students who need it, 39 have shown dramatic gains in student learning.

If Chicago can do it, America can do it. That's why, earlier this year, I submitted to Congress an education agenda that has all the components that have worked in Chicago, plus others that would benefit Chicago. In my education agenda, I call for more responsibility, more accountability, tougher standards--and more opportunity for students and teachers to meet those standards. I call for smaller classes in the early grades with the help of 100,000 new teachers. I call for voluntary national tests for 4th grade reading and 8th grade math. For schools that agree to end social promotion, I call for help in providing afterschool and summer school to students who need it. I call for safer schools through more partnerships with local law enforcement. I call more charters schools; more training and certifying of master teachers; and better rewards for our most committed teachers. I call for every classroom and school library to be hooked up to the Internet by the year 2000. I call for a child literacy program to provide enough tutors so that every child in America can read a book independently by third grade. I call for tax breaks that will help fund the construction of 5000 new schools. [modernization of old schools?] And I offer a way to do all this within the balanced budget, without touching a dime of the surplus.

Yes, this is an ambitious agenda. But it can all be done. And it must all be done simultaneously if we are to seriously improve public education in America.

Unfortunately, Congress is moving forward on only one of these agenda items: child literacy. I am grateful for that help. But Congress must do much more. To save America's public schools, Congress must act on my entire agenda, all at once, now, before the congressional session ends and the moment of opportunity slips away.

With a better-educated workforce, we can continue the economic prosperity that has made America the envy of the world. Yet instead of

acting on my education agenda, Congress has been fiddling with tax cuts that will drain the surplus before it even shows up on the government's books. That could put at risk the fiscal discipline that has given us our prosperity. Instead of risking the economy, Congress right now could be saving public schools, strengthening the environment; passing campaign finance reform and a real patients bill of rights.

America needs Congress to act now, on the right priorities. And if Congress won't, America needs a new Congress. You'll all have a chance to make that happen in November.

Thank you and God bless you.